
Administration and Management of Local Roads and Streets

**A Handbook for Indiana
County, City and Town Officials**

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Abstract of Contents

Introduction. This handbook, *Administration and Management of Local Roads and Streets*, is a revision of an earlier version carrying the same title, and distributed in 1988. The contents of this new version are very similar to the original. It is designed to be useful to the Indiana local road and street official. Development and maintenance of transportation facilities and capabilities have been within a longstanding policy of the United States government and the governments of the states. This dedication to the development of lines of commerce has been and is critical to the economic well-being of the nation, all the way from Washington to Indianapolis to Monon. Following this introductory chapter, the discussion moves from administrative and financial issues to those technical. The handbook concludes with two chapters; one focused on the national transportation law authorization process and the other on environmental and preservation issues and challenges.

Local Authority. Indiana's Home Rule legislation of the 1970's and '80's changed the way we look at local government authority. The legislation fundamentally altered Dillon's Rule, which held that authority not expressly granted to a local government entity, was therefore withheld. The new legislation made it possible for questions concerning authority to be resolved in favor of the local governmental entity unless expressly withheld by the Indiana Constitution or statute. The definition and job descriptions of the fiscal, legislative and executive entities of local governments are explained in a quick reference guide. Also, a number of key road and street authority issues including budgeting, right-of-way management, purchasing, condemnation, planning, intergovernmental relations and coordination, and jurisdictional issues are summarized.

Intergovernmental Relations. Intergovernmental relations (IGR) or "interlocal" relations, as it is sometimes known, take on new importance and meaning in today's complicated political and economic environment. Intergovernmental transfers of funds are a driving force in IGR. The resource allocation decision is a key element. IC 36-1-7 establishes the authority for interlocal agreements. This authority provides the opportunity to maximize scarce resources. Intergovernmental relations may be vertical or lateral and they can be diverse, depending on geography. For example, twenty Indiana counties have borders with counties of Ohio, Illinois, and Michigan, and eighteen counties border the Ohio or Wabash Rivers. A few towns border towns or cities on the other side of a state line. Special taxing districts, utilities, conservancy districts, and waste and emergency management agencies are part of this

picture. Federal and state agencies also impact local road and street work. Important are the Indiana Departments of Natural Resources (DNR), Department of Environmental Management (IDEM), and some U.S. Governmental agencies such as the Environmental Protection Agency (EPA), the United States Department of Agriculture (USDA), and the Army Corps of Engineers. In addition, the Indiana Department of Commerce plays a role at the local level. Finally, government based professional associations of local and state officials work to ensure good government and management.

Funding the Local Transportation System. This chapter includes the planning and management of funds, and the measuring of sources and uses of funds. Included are federal, local, and special funding; and purchasing and public construction procedures and administration. Budgeting and fund accounting areas are reviewed. The budget process for Indiana Counties, Cities and Towns is a feature of this chapter and is based upon Indiana LTAP Budget Workshops held annually. The purchasing decision, its management, and the statutory requirements and limits are highlighted. Innovative funding strategies are discussed.

Transportation Planning. The responsibility for transportation planning is discussed from the vantage of the national, state and local levels. Emphasis is on the local level. The responsibilities of the planning organizations and their staffs are reviewed. The fundamental elements of planning are discussed, as well as the comprehensive plan and the thoroughfare plan. Where established, Metropolitan Planning Organizations (MPO's) are the key to planning. It is a reality though, that a preponderance of Indiana's local governments have populations of less than 10,000. Because many smaller communities don't have the advantage of an MPO, rural planning options exist and are discussed in this chapter.

Obtaining, Maintaining, and Vacating Right-of-Way. Public road right-of-ways exist today for three reasons: someone either granted or dedicated them to the government; the general public or the government has used them over an extended period of time; or the government took the property used for right-of-way pursuant to its exercise of the right of eminent domain. The focus here is on the acquisition of new public road right-of-way and some of the issues relating to existing public road right-of-way. Verifying a road or street legal and administrative status is a challenge. As urbanization increases, right-of-way questions and issues multiply and

become more complex. In recent years, the establishment and management of utility easements in the road or street right of way has become more pressing. Add to that the requirement for environmental assessments, historic preservation reviews, and other required permits required to comply with federal and state statutes and rules. Vacation of roads, streets and alleys is required when the right of way is no longer needed or restructured. Finally, a related issue is the abandonment of railroad corridors and right-of-way. Railroad abandonment is managed nationally by the Surface Transportation Board, and in Indiana by the Indiana Department of Transportation (INDOT) which plays a key role in monitoring notice requirements, and corridor disposition issues.

Management of Local Streets and Roads.

This chapter begins with a general treatment of the topic of management and its application to local road and street organizations. Traditional principles and functions of management follow, supported by a discussion of the task of organizing the local road and street effort. The organizing task includes a number of human resource areas such as job and performance evaluation, and internal policy development. The importance of training and leader development is emphasized. Both traditional and modern management, leadership and organizational development ideas are discussed. References for this chapter include modern general management texts used in the teaching of organizational leadership, and management at the supervisory level. These references appear in the handbook's master bibliography.

Transportation Security and Risk Management.

Administration and management of road and street work carries with it some significant risks which, if not recognized and managed, can have significant negative impact on the local government entity. The timely, pertinent and urgent subject of transportation security is the first topic. Issues include the overall mission of transportation security, interaction with other local government agencies and examples of external and internal security procedures. The intergovernmental backdrop is the new and dramatic national organization for homeland security. The changes in this structure and its impact on state and local government transportation agencies are discussed. The chapter then moves on to a discussion of the environment and management of risk, tort, insurance and related areas. Some suggestions for managing tort liability are discussed along with risk management strategy and policy suggestions.

Signage and Traffic Management. Local authorities have the power to control and manage traffic through the enactment of ordinances and erection of traffic control devices and signs. With that power comes the responsibility to maintain and upgrade these devices and signs and to be fully cognizant of community changes, which will affect existing procedures for control. This chapter explores the responsibilities of the local authority involving traffic management and signage. The Manual on Uniform Traffic Control Devices (MUTCD) sets forth the minimum requirements, and should be followed by all government personnel to reduce liability. Various aspects

involving placement of signs, warrants for traffic signals, speed limits, pedestrians, parking issues, work zone traffic control and others are all discussed.

Asset Management. Inventory management and maintenance of that inventory are important to any successful enterprise, be it private business or a public entity. The road and street inventory is a key element in the management of the total transportation infrastructure and supporting assets of the local agency. Because public safety is a critical issue, the age, condition and estimated life of these assets are important elements of information needed to effectively manage the system. This chapter reviews these topics and provides some guidelines and examples which can be used to implement asset management plans and strategies.

Engineering and Technology. Challenges include bridges, design and specifications, inspection, drainage, signage, construction, snow and ice removal. This chapter focuses on general engineering related topics, as well as sources of information about the ever-changing technology that relates to them. Some topics discussed include environmental issues such as pollution control and snow and ice removal, how to go about permit applications, construction inspection, the process of selecting a consultant, bridges, roadway maintenance and more. Sources of up-to-date information are included in the discussion.

National Transportation Act Authorization.

The process of reauthorizing the national transportation law is the focus of this discussion. Beginning with some historical background and working through the Congressional process, this chapter moves on to a discussion of some of the advocacy groups that have an interest. The 2003 transportation authorization is a backdrop, and as it turned out, reauthorization was not completed that year. As of this writing, it is not completed. As a result, the narrative of this chapter is general in its treatment of the topic.

Special Challenges. Local Public Agencies are faced with the challenge of regulation in important areas. First, the National Environmental Policy Act requirements for environmental assessments of road and street projects are covered. Preservation issues are reviewed as is the Section 106 Process. Attempts to shorten the time required for these reviews include identifying those structures for which agreement can be reached as to historic value. Regardless, LPA's and their consultants are required to adhere to federal and state environmental and historic property regulations. This chapter wades into the environmental and preservation challenges and links local government road and street official's agencies that are both gatekeepers and enablers. In this area, the list of involved agencies lengthens. Included are INDOT, IDEM, DNR especially the State Historic Preservation Office (SHPO), U.S. Army Corps of Engineers, U.S. Natural Resources Conservation Service (NRCS), U.S. Department of the Interior, and the U.S. Forest Service. Indiana governments are also assisted by the Federal Highway Administration, Indiana Division (FHWA-Indiana Division).

Preface and Acknowledgements

About the Handbook

Administration and Management of Local Roads and Streets: a Handbook for Indiana County, City and Town Officials. This is the second iteration of a manual with the same title issued by the Highway Extension and Research Project for Indiana Counties and Cities in 1988. In 2000–2001, a revision and update of the manual was initiated by the Indiana Local Technical Assistance Program (IN-LTAP), the successor to HERPICC.

This new version of the handbook replaces the 1988 version. It is now a one volume format, with most of its 13 chapters supported by sections of selected Indiana statutes pertaining to the subject. The 2004 version of the handbook adds some new topics related to historic properties, environment, engineering and technology, national transportation policy and fund transfers, asset management and transportation security. More details about the handbook are found in Chapter 1, Introduction.

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Introduction

Introduction

This manual about the administration and management of Indiana's roads and streets focuses on counties, cities and towns within the framework of state and national transportation issues. It is based upon an earlier work by the Highway Extension and Research Project for Indiana Counties and Cities (HERPICC). Published in 1988, *Administration and Management of Local Streets and Roads* had its own genesis in *Roads and the County*, an Oregon County Commissioners' manual, which discussed 13 topics, including many that appear here in the 2004 manual and its predecessor, the 1988 HERPICC publication.

If you are familiar with the 1988 manual, you will notice that both the old and the new manuals take a different approach to local road and street work than traditionally presented at the Purdue Road School or at LTAP workshops throughout Indiana. Yet, be assured that the flavor of those presentations appear in Chapter 4's budgeting and in Chapter 10's asset management presentations.

This Manual

In introducing the new manual, *Administration and Management of Local Roads and Streets*, we provide an overview of its contents and then adhere to a tradition established earlier by discussing historical perspectives about streets and roads over nearly 200 years. This manual offers critical content on 12 major areas of importance to local officials. The manual moves the discussion from administrative issues to technical issues, concluding with two chapters focused on special timely issues of the early twenty-first century.

Children and Plank Road.

The planks of this Tippecanoe County road are barely visible in this photograph. From the mid to late 19th century, these roads were most often constructed by private concerns who then charged for their use. A later movement resulted in efforts to establish 'free' plank or gravel roads which increased the authority and responsibility of Boards of Commissioners of the individual counties. This evolution continued to the establishment of the 'county unit' road laws during the first twenty-five years of the 20th century. Interest in improving road and street laws and management continue today. (Tippecanoe County Historical Association)

We begin by examining government officials' authority to carry out their road and street work. Next is the ever-important challenge of intergovernmental relations, becoming more routine, albeit challenging. Funding road and street efforts, inherent in the intergovernmental environment, and transportation planning follow. The chapter on right-of-way issues is varied and extensive because current topics are now often confrontational. The management chapter addresses such topics as managerial functions, training, and a number of related issues.

The discussion then moves to the serious matter of risk management and transportation security, along with traditional tort liability topics, the imperative of transportation infrastructure, and facility security. Chapter 9, which is on signage and traffic management, is the first of three technical chapters, followed by asset management and engineering and technology.

Because local officials need information for planning and are often frustrated by its complexity, the chapter on the Transportation Efficiency Act introduces the national transportation authorization and reauthorization process. The final chapter looks at special issues—most significantly, the preservation of historic properties and artifacts, which government agencies must address as they continue to work daily on their local infrastructure.

Designed to enhance usability and utility, the manual ends with traditional appendices, bibliography, notes, and an index.

Indiana Roads and Streets—Beginnings

Development and maintenance of transportation facilities and capabilities have been within a longstanding policy of the United States government and the governments of the states. This dedication to the development of lines of commerce is critical to the economic well-being of the nation, all the way from Washington to Indianapolis to Monon.

Indiana's Early Transportation Policies

First embodied in "The American System," sponsored by Henry Clay and his supporters, the national government increased its support of roads and canals nationally and locally. Indiana's Internal Improvements Act of 1836 is an important example. Implementation stymied along the way by the "canal debacle," brought on by ambitious plans overtaken by the new railroad

technology. This 1836 law was also notable for establishing early policy for roads in Indiana. Through the enhancement of transportation, this early development and activity improved economic life.

The “how-to” of prioritizing transportation efforts became characteristic of the discussion. Indeed, what has changed after all? We debate this today, and to those who are not intensely engaged in transportation issues, the discussion must seem endless. It indeed goes on—and will continue to go on. This philosophy and intent have long driven Indiana leaders from the days of the Old Northwest Territory and the Indiana Territory. Indiana focused on roads, canals—and later, railroads—as the state and its transportation system developed and passed numerous changes and improvements to the present day.

This then, in part, becomes the story of this manual. We introduce this story by first taking a look at some key issues of the past and then tie them to the present and the future.

We are fortunate that those who have gone before us wrestled with the subjects of roads, streets, and canals long before we became as mobile as we are today. This historical background

provides a deeper understanding of Indiana’s transportation system, which is the result of geographical constraints and opportunities, the overall development of the state, and of course, its social, economic, and political environment. The discussion also introduces the administration and management of local roads and streets as a significant part of the overall whole.

Twentieth-Century Roads and Streets—Policies and Progress

The world in 1900 was very different from today’s. A nation, a state, local communities, and their citizens were striving to meet their potential, only to be confronted by literally muddy obstacles to mobility and progress. This situation was just as true in Indiana where the stirrings of the better roads movement and the wheelmen were increasingly vocal about the need to change transportation policy.

The second part of the history of our state and local road miracle is a twentieth-century story, which continues into the twenty-first. The Federal-Aid Highway Act of 1916 provided the mechanism

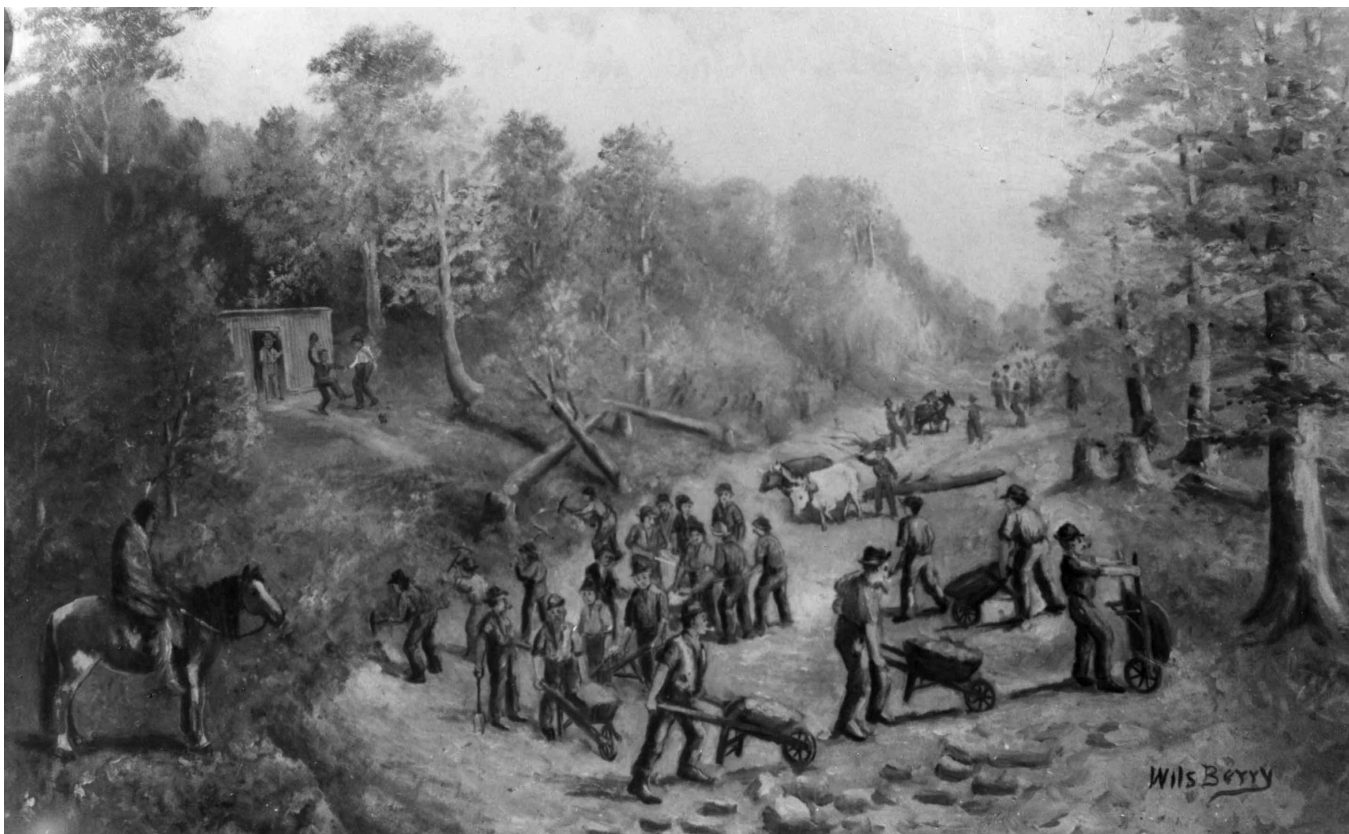


Figure 1-1. Early public works construction techniques were very labor intensive, especially true in the early Northwest Territory. Roads and canals had to be wrested from the reluctant wilderness. A comparison of yesterday’s challenges and techniques with those of today engenders an almost reverent appreciation of the benefits of highway research. Yesterday’s builders were required to clear the right of way of as many obstacles as possible. In some cases the most stubborn tree stumps might be left to deteriorate and the road routed around them. Disease often traveled with the work crews, many of whom were felled by malaria, dysentery, and cholera to mention only a few.

Wilson Berry, a Logansport, Indiana artist rendered the original painting of this scene. It was donated to the Tippecanoe County Historical Society in the 1930’s and hangs in the Tippecanoe County Historical Museum. (Photo courtesy of the Tippecanoe County Historical Association)

and financial incentive to the states to organize and plan for establishing and maintaining state highway systems. The Indiana General Assembly responded by establishing a system of “market roads” as the model for the statewide network. The ink was barely dry before the plan was successfully challenged in court. Going back to the drawing board, the 1919 General Assembly rewrote the law, establishing the Indiana Highway Commission, the forerunner of today’s Indiana Department of Transportation, and a revised highway system that connected the county seats of government and cities and towns with more than 5,000 residents. This system was the basic platform for today’s modern system of Indiana highways, roads, and streets. It has evolved and assimilated the overlain system of interstate highways.

The Move to Intermodalism

By the 1990s, the move to a more intermodal approach resulted in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), which included expanded ways of thinking and funding regarding where the transportation system should go and what it should be in the new century. Now, all modes would be represented in an attempt to achieve a more integrated approach to transportation. The scramble for scarce financial resources continues. (See Chapter 12)

Getting to the County Unit

Indiana’s road and street funding policy and organization evolved within an environment of fragmented responsibility for state and local roads. The legislative branches’ early concerns were with the status of transportation. The 1816 Constitution gave the General Assembly the authority to enact local laws. Some of the first legislative acts regarding transportation provided for a process for establishing roads, which included instructions for the “viewing and establishment” of roads. Some examples of state roads include the Michigan Road and the New Albany to Vincennes Road. Statutes were also enacted providing for the laying out of local roads. This was the ideal, tempered by the reality of the priorities given to canals and railroads during most of the nineteenth century.

An environment of scarce or nonexistent financial resources necessitated a continuation of earlier processes for maintaining

local roads. In lieu of taxes, a controversial and poorly supervised system of working on the road (*corvée*) facilitated and conducted road work. From early territorial days to the second decade of the twentieth century, residents along a county or township road were required to maintain a section of the road and to maintain a gravel pit for that purpose. Additional features of the nineteenth century included plank roads and private gravel toll roads, which enhanced the local surface transportation of people and goods.

By the last quarter of the nineteenth century, a movement to “free gravel roads” began and continued into the early twentieth century. This movement was codified in the Indiana road laws and generally described as the Gravel Road Law.

These laws retained a link with the past by carrying forward criteria for width, right of way, eminent domain, and prescription. The earliest of the “modern” laws were enacted in 1885 and 1893 and rewritten again, with the passage of the 1905 Gravel Road Law. Gravel Road Law language and procedures remained in the Indiana Code with some modifications until the late 1980s, when much of it was rescinded or recodified in Titles 8 and 36. The 1989 recodification of these laws into Titles 8 and 36 eliminated some of the language and procedures. Some lament the loss of the interesting, but archaic, language of the past, and many of the older, obsolete provisions vanished during the late 1980s revision. This may or may not have contributed to the more recent issue of revising poorly defined documentation of right-of-way. A recent case, *Thompson vs. WorldCom*, established commissioners’ records and orders as valid in the recording of right of way. (See Chapter 6)

The County Unit Law of 1919 established the current arrangement of county road responsibility, which unified the county road administration and responsibilities. It established the county as the local government agency with exclusive responsibility for county roads, leading to the idea of the County Unit. The commissioner districts trace their existence to the older system of identifying the roads for which individual commissioners were responsible. Some remnants of the older arrangement appear from time to time as local boards of commissioners interpret what is best for their areas. The County Unit remains, as do some of the original procedures for establishing and documenting local roads and streets.



Local Authority

Introduction

The authority of the local unit to carry out its road and street administration and management is based upon the Indiana Territorial Laws, the Indiana Constitution of 1851, the previous 1816 Constitution and their antecedents. Since 1851, the Indiana General Assembly through its legislative process has interpreted, updated and augmented local units' authority. Throughout, the courts have provided additional interpretation and decisions. The most recent modernization of the statutes came with home rule legislation, which evolved in Indiana as part of the national movement promoting the philosophy that local governmental units should carry out the business of governing. Our purpose here is to explore the background and some specifics of local authority as they apply to road and street work. The broad brush of local authority is unavoidable because we discuss local roads and streets within its framework.

Home Rule and Local Authority

Home rule came to Indiana in the 1970s. The new statutes greatly modified the requirement for local governments to apply to the General Assembly in cases where authority and power have not been explicitly granted. In 1980 the existing home rule statutes developed in the 1970's were upgraded and recodified in Title 36

Rural Road Scene

In order to provide for the public access and mobility, municipal corporations (counties, cities and towns) have within certain constraints, the power to establish, lay out and to vacate roads, streets and alleys and associated structures. This rural road scene illustrates the components. The right-of-way is procured through acquisition or donation. The right-of-way access to the bridge can be established in a similar way. The technical specifications for the right-of-way and the bridge are designed using engineering standards for the structure and its abutments. The local public agency responsible for the road, street or supporting structure is empowered by legislative and constitutional authority purchase engineering and construction services, or to perform the work in house. Along with state and federal agencies, the LPA is responsible for the funding of all or part of the project. Without the local authority to do this work, chaos would be the order of the day.

of the Indiana Code. Home rule essentially reversed that part of Dillon's Rule, which held that local governments possessed only those powers directly conferred by statute or the constitution. The relationship of the state to the local government, though, remains the same (Perry 1977, 9-12). The Indiana Constitution of 1816 did not refer to the independence of local governments (Perry 1977, 8), but the Indiana Constitution of 1851 prohibited local or special laws concerning the location and vacation of roads (Article 4). It has been left to the legislative branch to bring into existence the local governmental structure found in Indiana today. A number of Indiana statutes provide the power to local governments to act in the area of transportation and related matters. Figure 2-1, Quick Reference Guide to Local Authority, lists the key statutes applicable to the administration of local street and road programs. Notice that it also highlights articles and sections found in Title 5, State and Local Administration; Title 8, Transportation and Public Utilities; Title 32, Property; and Title 36, Local Government. Because the guide is an outline view of a larger universe, seek more detailed information in the statutes themselves.

Limitations On Local Authority

Local governments cannot exercise authority that has been expressly granted to other entities or withheld by the Indiana Constitution of 1851 as amended. (See **IC 36-1-3-5** for the full text of the statutes). Local road and street officials generally have the authority to acquire right-of-way, to lay out, maintain, improve, manage, ultimately to vacate roads and streets, and to perform all implied tasks associated with those duties. This is not blanket authorization. Local governments must follow legislative and fiscal procedures, fulfill the legal requirements for notice, and effect coordination with state authorities and other governments.

Federal mandates may also restrict local authority. For example, federal-aid highway laws establish mandatory policies for planning by metropolitan planning organizations (MPOs) and mandate the allocation of surface transportation funds for planning and the federal aid planning and programming process. Road and street examples include requirements for certain financial and maintenance records and detailed documentation of right-of-way acquisitions. Additional federal mandates and guidance emanate from the Clean Air Act, the Clean Water Act, the American Disabilities Act, the

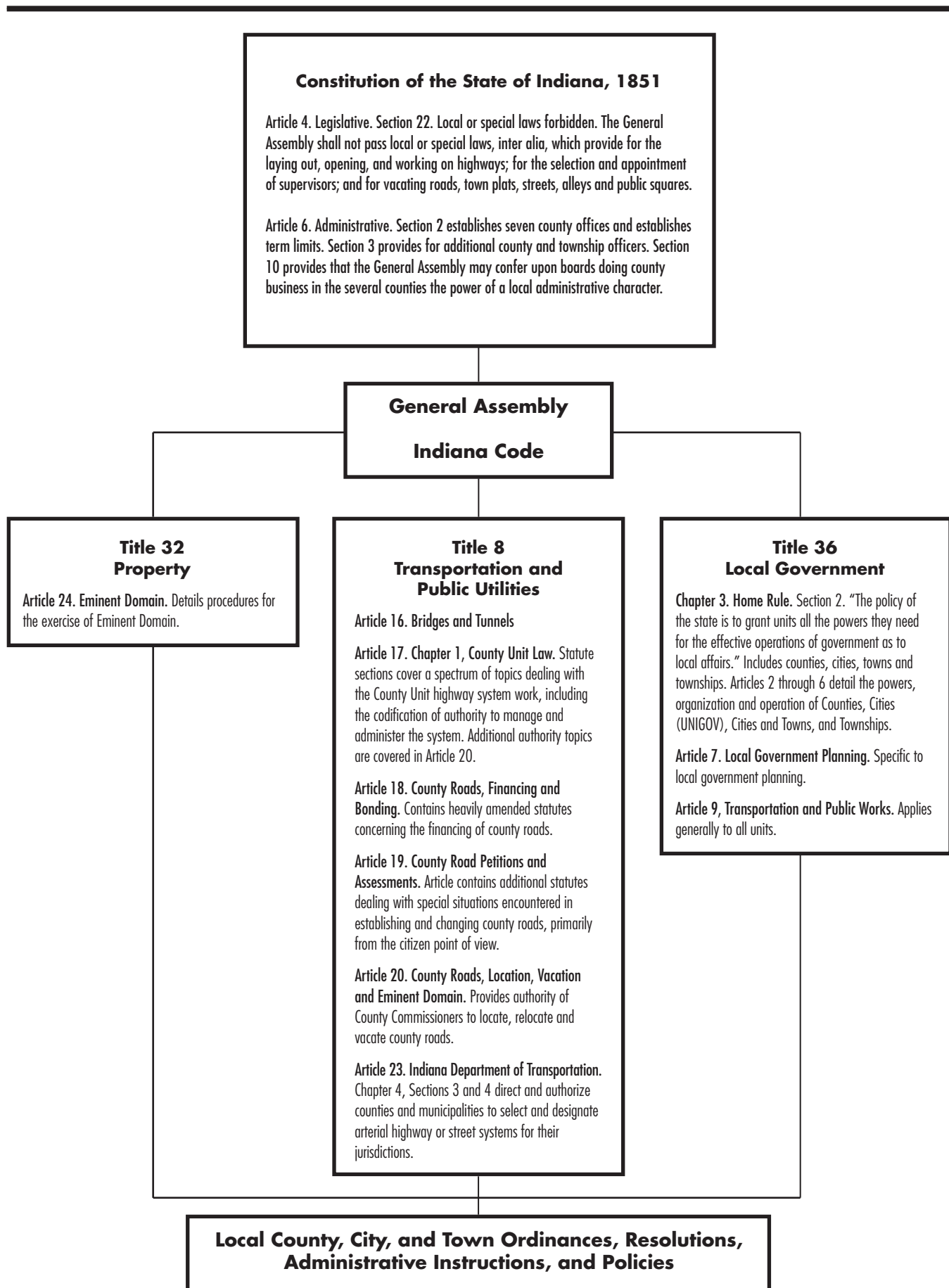


Figure 2-1 Quick Reference Guide to Local Authority

	Executive	Fiscal Body	Fiscal Officer	Legislative
County with No Consolidated City	Board of County Commissioners	County Council	Auditor	Board of County Commissioners County Council*
County with a Consolidated City	Mayor of Consolidated City	City-County Council	Auditor	City-County Council
Consolidated City	Mayor	City-County Council	Controller	City-Council Council
First-Class City	Mayor	Common Council	**	Common Council
Second-Class City	Mayor	Common Council	Controller Clerk Treasurer	Common Council
Third-Class City	Mayor	Common Council	Controller Clerk	Common Council
Towns	President of Town Council	Town Council	Clerk Treasurer	Town Council
Townships	Trustee	Advisory Board	Trustee	Advisory Board

Notes:

* County-Council for county having two (2) or more Second Class Cities (according to 1980 census, this applies to Lake and Saint Joseph Counties only)

** When First Class City becomes Consolidated City, the First Class City is abolished as a separate entity. (IC 36-3-1-4)

"City" refers to a Consolidated City or other Incorporated City of any class unless reference is to a School City. (IC 36-1-2-3)

"Town" refers to an Incorporated Town, unless reference is to a School Town. (IC 36-1-2-21)

"Township" refers to a civil township, unless reference is to a congressional township or school township. (IC 36-1-2-22)
Classification of Municipalities (IC 36-4-1-1)

Status & Population	Class
Cities of 250,000 or more	First Class Cities
Cities of 35,000 to 249,000	Second Class Cities
Cities of less than 35,000	Third Class Cities
Other municipalities of any population	Towns

Figure 2-2, Executive, Legislative and Fiscal Authority, provides a quick reference guide to executive, legislative and fiscal extant bodies. The matrix differentiates legislative functions within each local government classification. Generally, the executive, accountable to the citizens of the unit, is responsible for governing, management, and policy. The fiscal body, also accountable, is responsible for budget approval, appropriations of funds, allocations of resources and the exercise of fiscal control. Local road and street authority includes budgeting, asset management, right-of-way management, purchasing, eminent domain, planning, intergovernmental relations and coordination, signage and traffic regulation, general administration and jurisdictional and intergovernmental coordination. Subject also to federal, state and sometimes regional or special district control, local units often carry out these functions under the authority of local resolutions and ordinances.

Figure 2-2 Legislative & Executive Authority

National Environmental Policy Act, the Historic Preservation Act, and others. The impact these mandates have are discussed as appropriate throughout the manual, especially in Chapter 3, Intergovernmental Relations; Chapter 5, Transportation Planning; and Chapter 13, Special Challenges.

Ordinances and Local Authority

Local governments have the power to enact ordinances and resolutions and to act upon motions, which have the purpose of regulating and managing streets and roads and appropriating money for these activities. Title 36, Local Government, of the Indiana Code provides the basis and mechanics for these powers for each governmental entity covered by the statute. Specific road and street statutes provide detailed guidance. A local government's legislative body acts using motions, resolutions, or ordinances. Motions are the most informal method of action because they are generally made orally, and they are noted in the minutes of the legislative body. The distinction between ordinances and resolutions is not clear. As a result, the terms are frequently used interchangeably. The Indiana Supreme Court has declared that an ordinance is a more formal or solemn declaration and that a resolution passed with all the formalities required for passing an ordinance may operate as an ordinance regardless of the name by which it is called (*Town of Walkerton v. New York, C & I St.L.R.CO., 1939, 18NE2d 799*).

"An ordinance is best defined as a local law prescribing a general and permanent rule. Resolutions ordinarily are used to take actions that are temporary only, or to grant a special privilege or which express the opinion of the (legislative body) such as those expressing sympathy or requesting action of governmental units" (Indiana Association of Cities and Towns' Handbook [IACT], 1999, 35–36).

Legislative bodies should consider the subject matter and determine the appropriate form for each local policy document. Procedural rules of city councils, county councils, and boards of commissioners should contain guidelines and procedures for the development and enactment of ordinances.

IC 36-1-5 requires all units except townships to "codify, revise, rearrange or compile ordinances into a complete, simplified code excluding formal parts of the ordinances." The intent of the legislation appears to be to develop ordinances that the public can easily read and readily access. This requirement doesn't require the hiring of a professional codification firm. Local units can tackle codification projects in-house with the advice of legal counsel and self-help manuals, available through libraries, legal counsel, and associations. The State of Washington manual available at www.mrsc.org is an example.

A governmental entity with the power to enact ordinances has the power to repeal such ordinances, unless the power has been otherwise restricted by statute. Examples might be amendments, which jeopardize a legally vested right, or an ordinance enacted in compliance with a statute that mandates the enactment, or which once enacted may not be repealed or amended (IACT 1999, 35). Because an ordinance has the same force as a statute

or law, the governmental entity enacting it has the power to enforce the provisions as required but is also subject to some restrictions. A governmental unit wishing to enact ordinances, which regulate traffic on roads and streets, must consider jurisdictional issues, especially if state rights-of-way are involved. **IC 9-20** and **IC 9-21** contain provisions that govern these issues. (See Chapter 9, Signage and Traffic Management.)

Rules Concerning Notice

The power to enact ordinances brings with it the responsibility to provide notice to the public. Most requirements for notice are based specifically on **IC 5-3-1**, Publication of Notices, and local units must strictly adhere to them to avoid problems. Generally, governmental units must give notice of ordinances that contain penalty provisions and appropriations of money. In these two cases, the unit must publish the full text of the ordinance as part of the notice. A number of other Indiana statutes contain specific notice provisions. This manual contains the most important of those relating to street and road work. Figure 2-3 summarizes notice requirements, which may have application to local street and road work (**IC 5-3-1-2**; IACT 1999). Users are encouraged to consult with responsible officials when working to ensure compliance with notice provisions. Figure 2-3 is designed to provide a general overview of the current requirements.

Planning at the Local Level

Planning and programming are important components of the administration and management of local streets and roads. In its broadest sense, planning is a decision-making process that evaluates two or more courses of action in deciding the 'how' of solving a problem or taking on a task. Examples are the transportation improvement plan and the waste management plan. The implementation of a plan requires budgeting and programming of the funds appropriated for given projects, which become program elements of a plan. Some management writers state that planning is the most pervasive of the management functions. The process certainly pervades most of this manual. It is discussed in detail in Chapter 7, Management of Local Streets and Roads, Chapter 4, Funding, and in Chapter 5, Transportation Planning. Chapter 5 also discusses the impact of local planning commissions and MPOs on the authority of local street and road officials.

Purchasing and Contracting

Local public agencies have the power to enter into contracts subject to the statutes governing each type of entity—county, city, town, special taxing district, MPOs, conservancy districts and others (**IC 36-1-4-7**). The publications of the Indiana Association of Cities and Towns, the Indiana Association of Counties, and the Indiana Association of County Commissioners contain detailed chapters about purchasing and contracting. Chapter 4 of this manual contains a section on purchasing and contracting and a number of the governing statutes. Local

Event	Requirement
1. Public Hearings	Twice one week apart. Second time at least 3 days prior to the event
2. An Election	Once: at least ten days prior to the date of the election
3. Sales of Bonds Notes, Warrants	Twice, at least one week apart First: 15 Days prior Second: at least 3 days prior
4. Receiving of Bids	First: at least 15 days prior, Second: 7 days prior
5. Estimated Budget and proposed tax rate	Twice in accordance with IC 5-3-1-1; the first at least ten days prior
6. Events for which notice is to be published after occurrence	One time within 30 days after the event

Figure 2-3. Requirements for Notice

officials should use legal counsel to assist them in preparing bids, contracts, and otherwise managing the purchasing process.

Purchasing for local roads and streets is an activity that requires close attention to ensure compliance with the Indiana statutes, specifically IC 5-22, Public Purchasing; IC 5-23, Public and Private Agreements; and IC 36-9, Transportation and Public Utilities. These statutes govern the procurement or leasing of materials using public funds, no matter the source. Local government boards and officers have the power to award contracts for the purchase or lease of materials (IC 36-9-2). Generally, county commissioners are authorized to purchase materials and could create a purchasing department under an ordinance based on powers granted by home rule legislation. IC 36-2-20, County Executive Powers and Duties, provides the authority for county commissioners in counties with two or more second-class cities to establish centralized purchasing procedures. In the case of towns, either the town board or the town manager can act as purchasing agent (IC 36-6-4-3 and IC 36-6-4-7). Because statutes govern the designation or definition of a governmental unit's fiscal officer and its procedures for payment of claims, the unit cannot modify them through a local ordinance. See Chapter 4 for more detail on purchasing.

Questions And Answers Concerning Local Authority

Q: What is the nature of a governmental unit's power to enact ordinances?

Answer: Under the general provisions of IC 36-1-4-11, counties, municipalities and towns may adopt, codify and enforce ordinances. IC 36-1-3-6 specifies the manner for exercising powers, including ordinances and resolutions.

Q: What are some of the limitations placed on a governmental unit when enacting ordinances?

Answer: A unit may exercise this power to the extent that it is not expressly granted to another entity (IC 36-1-3-5). There are also some powers specifically prohibited by statute listed in IC 36-1-3-8. The text of the code section is found at the end of this chapter.

Q: How are ordinances incorporated by reference?

Answer: State statutes, regulations or other authoritative documents may be incorporated into local ordinances by reference. This authority is to be exercised by the legislative body. The ordinance or code must state that

two (2) copies of the material are on file in the office of the clerk for the legislative body for public inspection, and the copies must be on file as stated for public inspection (IC 36-1-5-4). If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of federal or state statute, rule, or regulation, and a code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.

Q: What should be considered when drafting road and street ordinances?

Answer: Government entities use ordinances for legislation they intend to have a permanent and general effect. The legislation generally does not take effect immediately unless they insert an emergency clause. Using simple sentences and ordinary English makes the ordinance understandable to its users, and they should determine if there is a limitation on penalties a governmental unit can impose. Depending on the nature of the ordinance, they should consult certain state agencies for helpful information and advice. For example, the government entity should contact the Indiana Department of Transportation (INDOT) when drafting right-of-way or street light ordinances. (See Chapter 3, Intergovernmental Relations)

Q: What grants county commissioners or town or street supervisors the power to perform their duties?

Answer: The Board of County Commissioners exercises powers expressly granted by the Constitution and the statutes of the State of Indiana; or such powers as which arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law (Notes to Decision, IC 36-2-2-2, Burns Indiana Statutes Annotated). Cities, towns and counties have the general powers conferred by IC 36-1-3. The broad powers this statute gives to these units must be exercised by ordinance or resolution. Some Indiana Code sections repeat specific authority to enact ordinances to meet a given requirement. IC 9-21 and numerous provisions in Title 8 and 36 are examples. The unit's legal counsel should be consulted when drafting and enacting ordinances and resolutions.

Q: Apart from general home rule powers, what is the specific authority of the Board of County Commissioners to conduct road and street work?

Answer: The Board of County Commissioners is authorized to:

In addition to the following, IC 8-17-1 provides authority for working on highways under the supervision of INDOT, if approved by INDOT. Construct new public highways by the laying out and improving, reconstructing or repairing of any existing public highway. The executive may reconstruct existing public highways and all that

entails. Related powers include establishing, altering, laying out, altering, widening, vacating, straightening, or changing a public highway, to include building necessary bridges, culverts, and approaches. The executive may also provide easements for drainage and utilities. (IC 8-17-1-2);

Appoint highway supervisors (IC 8-17-3-1);

Appoint highway engineers (IC 8-17-5-1);

Maintain, repair, construct, reconstruct east and south county-line roads, and other county-line roads by agreement with adjoining counties (IC 8-17-1-45);

Purchase, receive, or otherwise acquire the lands and rights necessary to widen, straighten or change the route of any county road. Should agreement to purchase not be possible, the statute authorizes the exercise of the power of eminent domain to consummate the purchase (IC 8-20-3-1); Solicit and evaluate bids for construction and maintenance of roads (IC 36-1);

Make suitable rules and regulations covering traffic upon any highway in the county, and shall be authorized to take such steps and do such things as necessary to enforce the rules when made (IC 8-17-1-40); and, Prepare an itemized estimate (budget) of all expenditures during the next calendar year (IC 36-2-5-7).

Q: Is the Board of County Commissioners empowered to perform work on highways, bridges and culverts under the supervision of the Department of Transportation?

Answer: Yes, but only if such work is approved by INDOT (IC 8-17-1-1). Note that an intergovernmental agreement may be required.

Q: For a city or town, what is the source of authority to conduct street and roadwork?

Answer: "A unit (which includes counties, cities and towns) may establish, vacate, maintain and operate public ways" (IC 36-9-2-5). In addition, a unit may grant rights-of-way through, under or over public ways (IC 36-9-2-6). "Public ways" includes highways, streets, avenues, boulevards, roads, lanes or alleys (IC 36-9-1-7).

Local Authority Statutes

IC 5-22-4

Chapter 4. Purchasing Organizations

IC 5-22-4-2

Sec. 2. (a) Except as provided in subsection (c), the Indiana department of transportation is the purchasing agency for the Indiana department of transportation.

(b) Except as provided in subsection (c), the individuals designated by the commissioner of the Indiana department of transportation are the purchasing agents for the Indiana department of transportation.

(c) Notwithstanding subsections (a) and (b), the Indiana department of transportation may request the Indiana department of administration to make purchases for the Indiana department of transportation. If the Indiana department of transportation makes a request under this subsection, section 1 of this chapter applies to those purchases.

As added by P.L.49-1997, SEC.1.

IC 5-22-4-5

Sec. 5. (a) The purchasing agency for a political subdivision is the person designated by law or by rule of the governmental body.

(b) The individuals designated by the purchasing agency are the purchasing agents for the governmental body.

As added by P.L.49-1997, SEC.1.

IC 5-22-4-6

Sec. 6. A purchasing agency may have more than one (1) purchasing agent.

As added by P.L.49-1997, SEC.1.

IC 5-22-4-7

Sec. 7. (a) A governmental body may enter into an agreement with other governmental bodies under IC 36-1-7 to form a cooperative purchasing organization.

(b) This article applies to the purchases made by a cooperative purchasing organization.

(c) A cooperative purchasing organization is the purchasing agency for a governmental body with respect to the purchases made for the governmental body by the cooperative purchasing organization. An individual designated by the cooperative purchasing organization is a purchasing agent for the governmental body with respect to the purchases made for the governmental body by the cooperative purchasing organization.

As added by P.L.49-1997, SEC.1.

County Authority

IC 8-1-23-1

Sec. 1. Whenever, in the opinion of any board of county commissioners, the use of any public county highway or highways shall be or will become impracticable or unsafe because of obstructions or interruptions resulting from erosion, changes in natural or artificial drains, or any other cause of any kind or nature whatsoever, the said board of county commissioners of the county wherein such highway or highways is located, or the boards of county commissioners of adjoining counties acting together, if the obstructed or interrupted part thereof is located upon a county line or extends from one county to another, shall have the power to close said highway or highways, or the necessary parts thereof, and divert traffic there from by suitable detours, if in their judgment such detours are necessary, until such time as the conditions causing such obstruction or interruption no longer exists and the continued use of said highway or highways become practicable and safe.

(Formerly: Acts 1947, c.151, s.1.)

IC 8-17-1

IC 8-17-1-0.1

Sec. 0.1. As used in this chapter, the term "department" refers to the Indiana department of transportation.

As added by Acts 1980, P.L.74, SEC.296. Amended by P.L.86-1988, SEC.65; P.L.18-1990, SEC.150.

IC 8-17-1-1

Sec. 1. A county executive may construct, reconstruct, improve, and maintain all public highways, bridges, and culverts in the county, including highways, bridges, and culverts under the supervision of the department, if approved by the department, or located in municipalities, as provided in this chapter. In addition, the department may, after petitioning the affected county executive or municipal legislative body and obtaining approval, construct, reconstruct, improve, and maintain county or municipal highways. The department and a county or a municipality in the county through which a toll road project under IC 8-15-2 passes may jointly undertake transportation projects (as defined in IC 36-1-10-2). The duties and responsibilities of a joint undertaking shall be assigned to the department, the county, or the municipality in the county as the parties may agree.

(Formerly: Acts 1919, c.112, s.1.) As amended by Acts 1980, P.L.74, SEC.297; Acts 1981, P.L.41, SEC.57; P.L.86-1988, SEC.66; P.L.343-1989(ss), SEC.9.

IC 8-17-1-1.2

Sec. 1.2. As used in this chapter, "highway" includes highways, roads, streets, bridges, tunnels, and approaches.

As added by P.L.113-1989, SEC.3.

IC 8-17-1-2

Sec. 2. A county executive may construct new public highways or may reconstruct and improve any existing public highways or parts of those highways with road paving materials. The executive may establish, lay out, alter, widen, vacate, straighten, or change a public highway in connection with the improvement and may build all necessary bridges, culverts, or approaches in the improvement of highways. In addition, the executive shall provide easements necessary for drainage and utilities.

(Formerly: Acts 1919, c.112, s.3.) As amended by P.L.86-1988, SEC.67.

IC 8-17-1-2.1

Sec. 2.1. (a) In all counties with a population of less than fifty thousand (50,000), any person through whose land any county highway is located may petition the county executive for permission to construct a cattle guard or other device for the purpose of keeping livestock on the property.

(b) In determining whether to grant permission, the executive shall consider the traffic flow on the highway and the cost of the erection of fences versus the cost of the construction of a cattle guard.

(c) The landowner shall bear the cost of construction and the erection of cattle crossing warning signs on the highway warning motorists that they are about to enter a cattle crossing area.

As added by Acts 1980, P.L.76, SEC.1. Amended by P.L.86-1988, SEC.68.

IC 8-17-1-3

Sec. 3. If a highway is constructed under this chapter, the right-of-way, or any required drainage courses, approaches, or any land necessary for the construction of a highway, or land necessary to build a bridge or a culvert shall be acquired by the county, either by donation by the owners of the land through which the highway passes or by agreement between the owner and the county executive, through eminent domain, or the public may acquire the property as is necessary in the same manner as provided for the construction of public highways. The entire cost of the right-of-way shall be paid by the county.

(Formerly: Acts 1919, c.112, s.4.) As amended by P.L.66-1984, SEC.79; P.L.86-1988, SEC.69.

IC 8-17-1-10

Sec. 10. When any highway or part of a highway is constructed, reconstructed, or improved, the county executive shall order the auditor to give notice, in accordance with IC 5-3-1, that, on a day to be named by the executive in an order, sealed proposals will be received by the executive for the improvement in accordance with IC 36-1-12. However, if the proposed improvement includes any bridge having a total span of more than twenty (20) feet, the executive shall receive separate bids for the bridge, and shall enter into a separate contract to build the bridge.

(Formerly: Acts 1919, c.112, s.11.) As amended by Acts 1981, P.L.57, SEC.22; P.L.86-1988, SEC.76.

IC 8-17-1-13

Sec. 13. (a) For the purpose of raising money to pay for the construction, reconstruction, or improvement of a highway, bridge, or tunnel, the county may issue bonds under IC 8-18-22, not to exceed the estimated costs of construction, reconstruction, or improvement and all expenses incurred and damages allowed before the letting of the contracts, and a sum sufficient to pay the per diem of the engineer and superintendent during construction and all costs of the financing incident to the issuance of bonds. The issue of bonds must also provide for a sufficient sum to pay for any extras or changes not contemplated in the original plans, specifications, and contract that the executive considers necessary, and that might be omitted by the engineer who drew the plans or specifications.

(b) The proceeds shall be kept as a separate and specific fund to pay for the improvement or construction, reconstruction, or improvement of the particular road for which they were issued. The proceeds shall be paid by the treasurer to the contractor, upon warrant of the auditor, as directed by the executive. The contractor shall be paid in accordance with IC 36-1-12. If there is a surplus left from the sale of the bonds after the road is complete, the surplus shall be transferred to a fund for the construction, reconstruction, or improvement of any other highway in the county and shall not be used for any other purpose. All funds shall be kept in the public depositories of the county and the interest added to the fund.

(Formerly: Acts 1919, c.112, s.14.) As amended by Acts 1981, P.L.11, SEC.59; P.L.86-1988, SEC.77; P.L.113-1989, SEC.4.

IC 8-17-1-18

Sec. 18. Whenever any highway is completed, the inspector, surveyor, or engineer shall file a sworn statement with the county auditor stating that the highway has been completed according to plans, plats, profiles, specifications, and contract and that the quantity and quality of material used in making the improvement was as required under standards and tests of the department. A competent materials testing engineer shall determine in a report whether the tests

and standards as to the quality of materials have been met. The materials testing engineer shall file a copy of the report with the county auditor.

(Formerly: Acts 1919, c.112, s.19.) As amended by Acts 1980, P.L.74, SEC.299; P.L.86-1988, SEC.82.

IC 8-17-1-19

Sec. 19. Any taxpayer may file an objection to the work by filing a sworn statement with the auditor that the road has not been completed according to the plans, plats, profiles, specifications, and contract, stating which item has not been completed. After the objection is filed, then the county executive shall set a hearing on the issue where it may hear other proof, may cause witnesses to be subpoenaed, and hear sworn evidence in the same manner as other issues are heard before the executive. The executive shall determine whether the work has been done according to the plans, plats, profiles, specifications, and contract. Any party aggrieved by the decision may appeal to the circuit court of the county within ten (10) days of the date of the decision, by filing a bond approved by the auditor of the county, for the payment of all costs in the cause that may be adjudged in the circuit court against the person taking the appeal. The proceedings shall be tried de novo in the circuit court.

(Formerly: Acts 1919, c.112, s.20.) As amended by P.L.86-1988, SEC.83.

IC 8-17-1-40

Sec. 40. A county legislative body may adopt ordinances regulating traffic on any highway in the county highway system, subject to IC 9-21.

(Formerly: Acts 1919, c.112, s.40.) As amended by P.L.86-1988, SEC.102; P.L.113-1989, SEC.6; P.L.2-1991, SEC.61.

IC 8-17-1-41

Sec. 41. (a) The plans and specifications must include all bridges, culverts, and approaches.

(b) The amount of the bonds must be enough to cover the expense of bridges, culverts, and approaches, and the contract, when executed, shall include that expense.

(Formerly: Acts 1919, c.112, s.41.) As amended by P.L.66-1984, SEC.94; P.L.86-1988, SEC.103; P.L.113-1989, SEC.7.

IC 8-17-1-45

Sec. 45. (a) Each county is responsible for the construction, reconstruction, maintenance, and operation of the roads, including the ditches and signs for those roads, making up its southern and eastern boundaries.

(b) The county executives of two (2) adjoining counties may enter into an agreement under IC 36-1-7 for the construction, reconstruction, maintenance, or operation of any road or part of a road that makes up

the boundary between the two (2) counties. In addition to the requirements of IC 36-1-7-3, an agreement under this section must provide for the following:

(1) The division of costs between the counties.

(2) The schedule for the work.

(3) The method of resolving disputes concerning the agreement if any arise.

(4) Any other terms the counties consider necessary.

(Formerly: Acts 1971, P.L.102, SEC.1.) As amended by P.L.86-1988, SEC.105; P.L.113-1989, SEC.8; P.L.84-1991, SEC.1; P.L.98-2000, SEC.7.

IC 8-17-3-1

Sec. 1. The county executive shall appoint a person as a supervisor of county highways. The county highway supervisor has general charge of the repair and maintenance of the county highways. The supervisor shall receive compensation for the services fixed by the county executive. The county executive shall pay the supervisor when a personal vehicle is used for necessary travel, a sum for mileage at a rate determined by the county fiscal body. The county executive shall provide all tools and equipment and the housing and repair of the tools and equipment.

(Formerly: Acts 1933, c.27, s.1; Acts 1945, c.165, s.1; Acts 1975, P.L.15, SEC.8.) As amended by P.L.86-1988, SEC.106; P.L.10-1997, SEC.14.

IC 8-17-3-2

Sec. 2. The supervisor has general supervision of the maintenance and repair of all highways, bridges, and culverts of the county that are maintained or repaired from the highway fund of the county.

(Formerly: Acts 1933, c.27, s.2.) As amended by P.L.86-1988, SEC.107.

IC 8-20-3

IC 8-20-3-1

Sec. 1. A county executive may acquire the lands and rights necessary to widen, straighten, or change the route of any county highway. If the executive is unable to agree with the owner of the land or right on damages or the purchase price, the executive may exercise eminent domain to condemn the land or right necessary to carry out the provisions of this section.

(Formerly: Acts 1935, c.94, s.1.) As amended by P.L.66-1984, SEC.135; P.L.86-1988, SEC.218.

IC 8-20-8

IC 8-20-8-1

Sec. 1. The county executive may temporarily close or relocate a road or a portion of a road that is part of that county's road system for a period not exceeding five (5) years. If the road is located on a county line or if parts of the road are located in more than one (1) county, the road may only be closed under this section by the joint action of the executives of all the counties. The order to temporarily close or relocate may be extended in increments of not more than two (2) years. If a road has been closed or relocated for three (3) or more years under this section, a person who filed the petition under section 2 of this chapter to temporarily close or relocate a road may file a second petition in accordance with this chapter to permanently close or relocate that same road.

As added by Acts 1979, P.L.97, SEC.1. Amended by P.L.86-1988, SEC.220.

IC 8-20-8-2

Sec. 2. Any person controlling the use of land contiguous to a road may file a petition with the executive to close the road under this chapter.

As added by Acts 1979, P.L.97, SEC.1. Amended by P.L.86-1988, SEC.221.

IC 8-20-8-3

Sec. 3. A petition to temporarily or permanently close or relocate a road must include:

- (1) the name and address of each petitioner;
- (2) the name of the county and township where the road is located;
- (3) an exact description of the portion of the road to be closed or relocated;
- (4) the length of time the road is to be closed or relocated; and
- (5) any detours or alternate routes needed to avoid an unreasonable interference with the flow of traffic on the county road system.

As added by Acts 1979, P.L.97, SEC.1. Amended by P.L.86-1988, SEC.222; P.L.3-1989, SEC.68.

IC 8-20-8-4

Sec. 4. (a) The county executive may temporarily close or relocate the road in response to the petition if:

- (1) the executive finds that closing or relocating the road is in the public interest and economic interest of the county;
- (2) the executive finds that closing or relocating the road will not unreasonably interfere with the flow of traffic on the county road system;

(3) the petitioner has filed with the county executive a surety bond, in an amount fixed by the executive, payable to the county and conditioned on the payment of damages which the county may sustain for the restoration of the closed or relocated road;

(4) the plans for the restoration and reconstruction of the road (if the executive elects to have the closed or relocated road restored) are approved by the executive; and

(5) the executive and the petitioner sign a written document stating the terms of the agreement for temporarily closing or relocating the road.

(b) The county executive may permanently close or permanently relocate the road in response to the petition if:

(1) the executive finds that closing or relocating the road is in the public and economic interest of the county;

(2) the executive finds that closing or relocating the road will not unreasonably interfere with the flow of traffic on the county road system; and

(3) the executive and the petitioner sign a written document stating the terms of the agreement for permanently closing or relocating the road.

As added by Acts 1979, P.L.97, SEC.1. Amended by P.L.86-1988, SEC.223.

IC 8-20-8-5

Sec. 5. The authority granted the board of commissioners under this chapter supplements and does not replace the authority the board may have under law to permanently vacate a road or street or to close a road or street for routine maintenance and repair.

As added by Acts 1979, P.L.97, SEC.1.

IC 8-20-8-6

Sec. 6. The petitioner shall send a copy of the petition by certified mail to each owner of property contiguous to the road.

As added by Acts 1979, P.L.97, SEC.1. Amended by P.L.86-1988, SEC.224.

IC 8-20-8-7

Sec. 7. This chapter does not apply to any temporary obstruction or closing of any county road by any board of commissioners before September 1, 1979.

As added by Acts 1979, P.L.97, SEC.1.

IC 8-23-4-3

Sec. 3. (a) The county arterial highway system shall be selected by the county executive in each county. The system shall be selected on the basis of the greatest general importance to the county, after an evaluation of each road in the county, including municipal connecting links and the state highway system. In selecting the

county system, the executive shall consider the following:

- (1) The kind and amount of traffic on a highway.
- (2) The length and condition of a highway.
- (3) The mileage that can be effectively improved to specified standards with available funds.
- (4) Any other applicable data.

The arterial highways selected by the executive under this section constitute the county arterial highway system of that county.

(b) The county executive may from time to time add, relocate, or delete highways from the county arterial highway system by following the procedure provided in subsection (a).

(c) If a highway or a segment of a highway is deleted from the county arterial highway system under subsection (b), the highway or segment may:

- (1) become a part of the county local highway system;
- (2) if located in a municipality, become a part of the system of major streets or local streets of the municipality, subject to agreement between the county executive and the highway authority of the municipality; or
- (3) be abandoned.

(d) All roads under the jurisdiction of the county highway authorities of each county not included in a county arterial highway system constitute the county local highway system of that county.

As added by P.L.18-1990, SEC.213.

IC 8-23-4-4

Sec. 4. (a) The agency responsible for highways in each municipality with a population of at least five thousand (5,000) shall select a system of arterial streets for the municipality. The system shall be selected on the basis of the greatest general importance to the municipality after an evaluation of each highway in the municipality. The system may not include highways that are part of the state highway system. The system of arterial streets must connect focal points of traffic interest, provide communication with other communities and outlying areas and provide for the continuity of the county arterial highway system into or through the municipality. The agency shall use engineering standards in selecting the streets.

(b) The agency responsible for highways in each municipality with a population of less than five thousand (5,000) may limit streets selected for the arterial street system to extensions of the county arterial street system or the municipal arterial street system of adjoining municipalities into or through the municipality.

(c) The system of arterial streets selected by an agency under subsection (a) or (b) constitutes the municipal arterial street system of that municipality.

(d) The agency responsible for highways in a municipality may from time to time add, relocate, or delete highways from the municipal arterial highway system by following the procedure provided in subsection (a) or (b).

(e) If a highway or a segment of a highway is deleted from the municipal arterial highway system under subsection (d), it may:

- (1) become a part of the municipal local highway system; or
- (2) be abandoned.

(f) All roads under the jurisdiction of the agency responsible for the municipal highways of each municipality not included in a municipal arterial highway system constitute the municipal local highway systems of that municipality.

As added by P.L.18-1990, SEC.213.

IC 36-1-2

IC 36-1-2-1

Sec. 1. The definitions in this chapter apply throughout this title.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-1.7

Sec. 1.7. "Assessed value" has the meaning set forth in IC 6-1.1-1-3.

As added by P.L.6-1997, SEC.202.

IC 36-1-2-2

Sec. 2. "Bonds" means any evidences of indebtedness, whether payable from property taxes, revenues, or any other source, but does not include notes or warrants representing temporary loans that are payable out of taxes levied and in the course of collection.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-3

Sec. 3. "City" refers to a consolidated city or other incorporated city of any class, unless the reference is to a school city.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-4

Sec. 4. "Clerk" means:

- (1) clerk of the circuit court, for a county;
- (2) county auditor, for a board of county commissioners or county council;

- (3) clerk of the city-county council, for a consolidated city;
- (4) city clerk, for a second class city;
- (5) clerk-treasurer, for a third class city; or
- (6) clerk-treasurer, for a town.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.44, SEC.35.

IC 36-1-2-4.5

Sec. 4.5. "Emergency" means a situation that could not reasonably be foreseen and that threatens the public health, welfare, or safety and requires immediate action.

As added by P.L.329-1985, SEC.1.

IC 36-1-2-5

YAMD.1989

Sec. 5. "Executive" means:

- (1) board of commissioners, for a county not having a consolidated city;
- (2) mayor of the consolidated city, for a county having a consolidated city;
- (3) mayor, for a city;
- (4) president of the town council, for a town;
- (5) trustee, for a township;
- (6) superintendent, for a school corporation; or
- (7) chief executive officer, for any other political subdivision.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.8-1989, SEC.93.

IC 36-1-2-6

Sec. 6. "Fiscal body" means:

- (1) county council, for a county not having a consolidated city;
- (2) city-county council, for a consolidated city or county having a consolidated city;
- (3) common council, for a city other than a consolidated city;
- (4) town council, for a town;
- (5) township board, for a township; or
- (6) governing body or budget approval body, for any other political subdivision.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.11, SEC.132; P.L.8-1987, SEC.81; P.L.8-1989, SEC.94.

IC 36-1-2-7

Sec. 7. "Fiscal officer" means:

- (1) auditor, for a county;
- (2) controller, for a consolidated city or second class city;
- (3) clerk-treasurer, for a third class city;

- (4) clerk-treasurer, for a town; or

- (5) trustee, for a township.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.44, SEC.36.

IC 36-1-2-8

Sec. 8. "Law" includes the Constitution of Indiana, statutes, and ordinances.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-9

Sec. 9. "Legislative body" means:

- (1) board of county commissioners, for a county not subject to IC 36-2-3.5 or IC 36-3-1;
- (2) county council, for a county subject to IC 36-2-3.5;
- (3) city-county council, for a consolidated city or county having a consolidated city;
- (4) common council, for a city other than a consolidated city;
- (5) town council, for a town; or
- (6) township board, for a township.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1982, P.L.33, SEC.15; P.L.213-1986, SEC.1; P.L.8-1987, SEC.82; P.L.8-1989, SEC.95.

IC 36-1-2-9.5

Sec. 9.5. "Materials" means supplies, goods, machinery, packaged software, and equipment.

As added by P.L.329-1985, SEC.2.

IC 36-1-2-10

Sec. 10. "Municipal corporation" means unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, or other separate local governmental entity that may sue and be sued. The term does not include special taxing district.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-11

Sec. 11. "Municipality" means city or town.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-12

Sec. 12. "Person" means individual, firm, limited liability company, corporation, association, fiduciary, or governmental entity.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.8-1993, SEC.512.

IC 36-1-2-13

Sec. 13. "Political subdivision" means municipal corporation or special taxing district.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-15

Sec. 15. "Regulate" includes license, inspect, or prohibit.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-15.5

Sec. 15.5. (a) "Responsible bidder or quoter" means one who is capable of performing the contract requirements fully and who has the integrity and reliability that will assure good faith performance.

(b) "Responsive bidder or quoter" means one who has submitted a bid or quote conforming in all material respects to the specifications.

As added by P.L.329-1985, SEC.3.

IC 36-1-2-16

Sec. 16. "Safety board" means the board of public safety or board of public works and safety of a city.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.309, SEC.39.

IC 36-1-2-17

Sec. 17. "School corporation" means a local public school corporation established under state law. The term includes a school city, school town, school township, metropolitan school district, consolidated school corporation, county school corporation, township school corporation, community school corporation, or united school corporation.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-18

Sec. 18. "Special taxing district" means a geographic area within which a special tax may be levied and collected on an ad valorem basis on property for the purpose of financing local public improvements that are:

- (1) not political or governmental in nature; and
- (2) of special benefit to the residents and property of the area.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-19

Sec. 19. "Statute" means a law enacted by the general assembly.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-20

Sec. 20. "Taxing district" means a geographic area within which property is taxed by the same taxing entities and at the same total rate.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-21

Sec. 21. "Town" refers to an incorporated town, unless the reference is to a school town.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-22

Sec. 22. "Township" refers to a civil township, unless the reference is to a congressional township or school township.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-23

Sec. 23. "Unit" means county, municipality, or township.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-2-24

Sec. 24. "Works board" means:

- (1) board of commissioners, for a county not having a consolidated city;
- (2) board of public works or board of public works and safety, for a city; or
- (3) town council, for a town.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.11, SEC.133; P.L.8-1989, SEC.96.

IC 36-1-3**IC 36-1-3-1**

Sec. 1. This chapter applies to all units.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.1.

IC 36-1-3-2

Sec. 2. The policy of the state is to grant units all the powers that they need for the effective operation of government as to local affairs.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-3

Sec. 3. (a) The rule of law that any doubt as to the existence of a power of a unit shall be resolved against its existence is abrogated.

(b) Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-4

Sec. 4. (a) The rule of law that a unit has only:

- (1) powers expressly granted by statute;
- (2) powers necessarily or fairly implied in or incident to powers expressly granted; and

(3) powers indispensable to the declared purposes of the unit;
is abrogated.

(b) A unit has:

(1) all powers granted it by statute; and

(2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

(c) The powers that units have under subsection (b)

(1) are listed in various statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-5

Sec. 5. (a) Except as provided in subsection (b), a unit may exercise any power it has to the extent that the power:

(1) is not expressly denied by the Indiana Constitution or by statute; and

(2) is not expressly granted to another entity.

(b) A township may not exercise power the township has if another unit in which all or part of the township is located exercises that same power.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.2.

IC 36-1-3-6

Sec. 6. (a) If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.

(b) If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must either:

(1) if the unit is a county or municipality, adopt an ordinance prescribing a specific manner for exercising the power;

(2) if the unit is a township, adopt a resolution prescribing a specific manner for exercising the power; or

(3) comply with a statutory provision permitting a specific manner for exercising the power.

(c) An ordinance under subsection (b)(1) must be adopted as follows:

(1) In a municipality, by the legislative body of the municipality.

(1) In a county subject to IC 36-2-3.5 or IC 36-3-1, by the legislative body of the county.

(2) In any other county, by the executive of the county.

(d) A resolution under subsection (b)(2) must be adopted by the legislative body of the township

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.2; P.L.251-1993, SEC.3.

IC 36-1-3-7

Sec. 7. State and local agencies may review or regulate the exercise of powers by a unit only to the extent prescribed by statute.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-8

Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.

(B) More than two thousand five hundred dollars (\$2,500) for any other ordinance violation.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(b) A township does not have the following, except as expressly granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.3; P.L.123-1987, SEC.2; P.L.3-1987, SEC.540; P.L.3-1990, SEC.122; P.L.251-1993, SEC.4; P.L.164-1995, SEC.14; P.L.1-1996, SEC.84.

IC 36-1-3-9

Sec. 9. (a) The area inside the boundaries of a county comprises its territorial jurisdiction. However, a municipality has exclusive jurisdiction over bridges (subject to IC 8-16-3-1), streets, alleys, sidewalks, watercourses, sewers, drains, and public grounds inside its corporate boundaries, unless a statute provides otherwise.

(b) The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas outside its corporate boundaries.

(c) Whenever a statute authorizes a municipality to exercise a power in areas outside its corporate boundaries, the power may be exercised:

(1) inside the corporate boundaries of another municipality, only if both municipalities, by ordinance, enter into an agreement under IC 36-1-7; or

(2) in a county other than the county in which the municipal hall is located, but not inside the corporate boundaries of another municipality, only if both the municipality and the other county, by ordinance, enter into an agreement under IC 36-1-7

(d) If the two (2) units involved under subsection (c) cannot reach an agreement, either unit may petition the circuit or superior court of the county to hear and determine the matters at issue. The clerk of the court shall issue notice to the other unit as in other civil actions, and the court shall hold the hearing without a jury. There may be a change of venue from the judge but not from the county. The petitioning unit shall pay the costs of the action.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4

IC 36-1-4-1

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to all units.

(b) Section 11 of this chapter does not apply to townships.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.5.

IC 36-1-4-2

Sec. 2. A unit may establish and operate a government.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-3

Sec. 3. A unit may sue and be sued.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-4

Sec. 4. A unit may have a corporate seal.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-5

Sec. 5. A unit may acquire, by eminent domain or other means, and own interests in real and personal property.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-6

Sec. 6. A unit may use, improve, develop, insure, protect, maintain, lease, and dispose of its interests in property.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-7

Sec. 7. A unit may enter into contracts.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-7.5

Sec. 7.5. (a) This section applies to a transaction that involves a parcel of real estate that is owned or leased by a unit and the unit or a board, an agency, a department, a commission, or other division of the unit has determined in a resolution, an ordinance, a lease, a contract, or other written instrument that the parcel of real estate:

(1) may have environmental contamination:

(A) that occurred during or before the time the unit owned or leased the parcel of real estate; and

(B) for which the unit may be liable under applicable laws; and

(2) will be used in connection with an economic development project that will:

(A) promote opportunities for employment of the citizens of the unit;

(B) attract new business enterprises to the unit; or

(C) retain or expand a business enterprise within the unit.

(b) Except as provided in IC 26-2-5-1 and notwithstanding defenses available and immunity provided in IC 34-13-3, a unit may enter into a contract or lease that contains a provision, a clause, a covenant, a promise, or an agreement by the unit to defend or indemnify any person against any claim, cause of action, demand, cost, judgment, or other loss of any kind provided for under the terms of the contract.

(c) A unit may not indemnify a person against any claim, cause of action, demand, cost, judgment, or other loss resulting from environmental contamination of the parcel of real estate caused by the negligence or willful misconduct of the indemnified person occurring after the effective date of the indemnification.

(d) Nothing in this section may be construed to limit any rights that a unit may have to defend or indemnify a person under any other law.

As added by P.L.123-1996, SEC.18. Amended by P.L.1-1998, SEC.201.

IC 36-1-4-8

Sec. 8. A unit may pay debts.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-9

Sec. 9. A unit may borrow money.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-10

Sec. 10. A unit may accept donations of money or other property and execute any documents necessary to receive money or other property from the state or federal government or any other source.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-11

Sec. 11. A unit may adopt, codify, and enforce ordinances.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-12

Sec. 12. A unit may require the attendance of witnesses and the production of documents relevant to matters being considered at meetings of a department or agency.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-13

Sec. 13. A unit may punish contempt and disorder in rooms of a department or agency.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-14

Sec. 14. A unit may hire and discharge employees and establish a system of employment for any class of employees based on merit and qualification.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-15

Sec. 15. A unit may fix the level of compensation of its officers and employees.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-16

Sec. 16. A unit may ratify any action of the unit or its officers or employees if that action could have been approved in advance. Ratification of an action under this section must be made by the same procedure that would have been required for approval of the action in advance.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-4-17

Sec. 17. (a) A unit may compromise claims made against it.

(b) A unit or a person designated in writing by the unit may do the following:

(1) Collect any money that is owed to the unit.

(2) Compromise the amount of money owed to the unit.

(c) A unit shall determine the costs of collecting money under this section. The costs of collection, including reasonable attorney's fees, may be added to money that is owed and collected under this subsection.

(d) A unit or the unit's agent that collects money under this section shall deposit that money, less the costs of collection, in the account required by law.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.64-1989, SEC.2; P.L.57-1993, SEC.14.

IC 36-1-4-18

Sec. 18. A municipality may exercise powers granted by sections 5 and 6 of this chapter in areas within four (4) miles outside its corporate boundaries.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-5

C 36-1-5-1

Sec. 1. This chapter applies to all units except townships.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-5-3

Sec. 3. The legislative body of a unit shall codify, revise, rearrange, or compile the ordinances of the unit into a complete, simplified code excluding formal parts of the ordinances.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.5.

IC 36-1-5-4

Sec. 4. The legislative body of a unit may incorporate by reference into an ordinance or code any material. The ordinance or code must state that two (2) copies of the material are on file in the office of the clerk for the legislative body for public inspection, and the copies must be on file as stated for public inspection.

As added by Acts 1980, P.L.211, SEC.1.

§ 36-2-2-2. Board of county commissioners --
County executive -- Establishment

The three (3) member board of commissioners of a county elected under this chapter is the county executive. In the name of "The Board of Commissioners of the County of" the executive shall transact the business of the county.

HISTORY:

IC 17-1-14-1, 17-1-14-5, recodified as IC 36-2-2-2 by Acts 1980, P.L. 212, § 1.

NOTES:

CROSS REFERENCES.

Constitutional provisions as to boards, Ind. Const., Art. 6, § 10.

County executive in counties with two or more cities of second-class and certain other counties, IC 36-2-3.5-3.

Hospital authority, duty to create upon request, IC 5-1-4-4.

Local alcoholic beverage board, appointment of members by county council, IC 7.1-2-4-6 -- IC 7.1-2-4-10.

President of board is member of county commission of public records, ex officio, IC 5-15-6-1.

INDIANA LAW JOURNAL.

The Decline of Sovereign Immunity in Indiana, 36 Ind. L.J. 223.

CITED:

United States v. Stodola, 953 F.2d 266 (7th Cir.), cert. denied, 506 U.S. 834, 113 S. Ct. 104, 121 L. Ed. 2d 63 (1992).

NOTES TO DECISIONS

ANALYSIS

In General.

Actions.

--Defense Funds.

--Parties.

--Process.

Authority.

Contracts.

Corporations.

Injunction.

Notes and Mortgages.

Property Ownership.

IN GENERAL.

County boards possess only such powers as are expressly or impliedly conferred by statute. Gavin v. Board of County Comm'rs, 104 Ind. 201, 3 N.E. 846 (1885); Woodruff v. Board of County Comm'rs, 10 Ind. App. 179, 37 N.E. 732 (1894); Board of County Comm'rs v. Fertich, 18 Ind. App. 1, 46 N.E. 699 (1897); Helms v. Bell, 155 Ind. 502, 58 N.E. 707 (1900); Kemp v. Adams, 164 Ind. 258, 73 N.E. 590 (1905).

Considered with respect to their corporate powers, counties rank low in the scale of corporate existence. State ex rel. Scott v. Hart, 144 Ind. 107, 43 N.E. 7, 33 L.R.A. 118 (1896); McCollom v. Shaw, 21 Ind. App. 63, 51 N.E. 488 (1898).

Counties are known only through their boards of commissioners and can act only by such boards. Board of County Comm'rs v. Wild, 37 Ind. App. 32, 76 N.E. 256 (1905).

ACTIONS.

Taxpayers may maintain an action to recover funds illegally expended where board of county commissioners fails or refuses to act. Zuelly v. Casper, 160 Ind. 455, 67 N.E. 103, 63 L.R.A. 133 (1903).

If a county board is sued in its corporate capacity, it should answer in the same capacity. Board of County Comm'rs v. State ex rel. Lewis, 61 Ind. 75 (1878); Board of County Comm'rs v. Branaman, 39 Ind. App. 193, 76 N.E. 1030, 78 N.E. 356 (1906).

The county board, or the state, on the relation of the county auditor, may sue on a note and mortgage due the county. Vanarsdall v. State ex rel. Watson, 65 Ind. 176 (1879).

--DEFENSE FUNDS.

If a county board is sued in its corporate capacity, it cannot be enjoined from using county funds in making a defense. Board of County Comm'rs v. Branaman, 39 Ind. App. 193, 76 N.E. 1030, 78 N.E. 356 (1906).

--PARTIES.

Suits on behalf of a county should ordinarily be brought in the name of the county board. Board of County Comm'rs ex rel. Bentley v. McIlvain, 24 Ind. 382 (1865); Caldwell v. Board of County Comm'rs, 80 Ind. 99 (1881); Shilling v. State ex rel. Board of County Comm'rs, 158 Ind. 185, 62 N.E. 49 (1901).

When a taxpayer brings a suit on behalf of a county, the county board is a necessary party defendant. Eder v. Kreiter, 40 Ind. App. 542, 82 N.E. 552 (1907).

While the board of county commissioners is the corporate entity representing the county and is in legal contemplation, the county, nevertheless the board of finance, may sue in its own name on bonds securing deposit of county funds when authorized by statute so to do. Dice v. County Board of Fin., 99 Ind. App. 405, 192 N.E. 770 (1934).

--PROCESS.

A summons returned by the sheriff "served by reading to defendants," naming each commissioner personally and styling them "commissioners of the county" was sufficient in an action against a board of county commissioners. Board of County Comm'rs v. Verbarg, 63 Ind. 107 (1878).

AUTHORITY.

County boards could only bind the county when legally in session. *Campbell v. Brackenridge*, 8 Blackf. 471 (1847).

The board of county commissioners has and can exercise the powers only as are expressly conferred on it by the constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law. *Board of County Comm'rs v. Sanders*, 218 Ind. 43, 30 N.E.2d 713, 131 A.L.R. 1048 (1940).

CONTRACTS.

Contracts may be made by county boards which will extend beyond the official terms of the members of the board. *Board of County Comm'rs v. Shields*, 130 Ind. 6, 29 N.E. 385 (1891); *Moon v. School City of S. Bend*, 50 Ind. App. 251, 98 N.E. 153 (1912).

Contracts for furnishing supplies to county offices did not bind the county unless made in accordance with the law. *Board of County Comm'rs v. Gillies*, 138 Ind. 667, 38 N.E. 40 (1894).

Boards of commissioners can make such contracts only as are authorized by statute, and the fact that they are made corporations does not enlarge their powers. *State ex rel. Workman v. Goldthait*, 172 Ind. 210, 87 N.E. 133, 19 Ann. Cas. 737 (1909).

CORPORATIONS.

The word "corporations" as used in the title of an act may be construed as used in a sense sufficiently broad as to include counties. *Steinkamp v. Board of County Comm'rs*, 209 Ind. 614, 200 N.E. 211 (1936).

INJUNCTION.

Injunction lies to prevent county boards from performing illegal contracts. *Board of County Comm'rs v. Gillies*, 138 Ind. 667, 38 N.E. 40 (1894).

NOTES AND MORTGAGES.

County boards have power to accept and assign notes and mortgages. *Vanarsdall v. State ex rel. Watson*, 65 Ind. 176 (1879).

PROPERTY OWNERSHIP.

Counties can hold property by devise. *Craig v. Secrist*, 54 Ind. 419 (1876); *Board of County Comm'rs v. Rogers*, 55 Ind. 297 (1876); *Board of County Comm'rs v. Dinwiddie*, 139 Ind. 128, 37 N.E. 795 (1894).

COLLATERAL REFERENCES. 56 Am. Jur. 2d Municipal Corporations §§ 189–192.

20 C.J.S. Counties § 63 et seq.

Burns Ind. Code Ann. § 36–2–2–2 (2003) By permission

IC 36-1-5-5

Sec. 5. A printed code that has taken effect constitutes presumptive evidence in any legal proceeding:

- (1) of the provisions of the code;
- (2) of the date of adoption of the code;
- (3) that the code has been properly signed, attested, recorded, and approved; and
- (4) that any public hearings required have been held, with any notices required given.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-5-6

Sec. 6. If the legislative body determines, and declares in a provision of a code, that the provision is a restatement or reenactment of an original ordinance or amendment thereof, then the legal conditions for the effectiveness of an original ordinance need not be met. Such a restated or reenacted provision shall be considered reordained by the adoption of the code.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-9-2

IC 36-9-2-1

Sec. 1. This chapter applies to all units except townships.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-2

Sec. 2. A unit may establish, aid, maintain, and operate transportation systems.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-3

Sec. 3. A unit may establish, aid, maintain, and operate airports, bus terminals, railroad terminals, wharves, and other transportation facilities.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-4

Sec. 4. A unit may regulate the services offered by persons who hold out for public hire the use of vehicles. This includes the power to fix the price to be charged for that service.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-5

Sec. 5. A unit may establish, vacate, maintain, and operate public ways.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-6

Sec. 6. A unit may grant rights-of-way through, under, or over public ways.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-7

Sec. 7. A unit may regulate the use of public ways. A unit also may regulate the use of school corporation grounds if requested by the fiscal body of the school corporation.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-8

YAMD. 1980

Sec. 8. A unit may establish, vacate, maintain, and control watercourses.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-18

Sec. 18. A municipality may exercise powers granted by sections 2, 3, 14, 16, and 17 of this chapter in areas within four (4) miles outside its corporate boundaries.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-19

Sec. 19. A municipality may exercise powers granted by sections 9, 10, 11, 12, and 13 of this chapter in areas within ten (10) miles outside its corporate boundaries.

As added by Acts 1980, P.L.211, SEC.4.



Intergovernmental Relations

Introduction

Though not new, the entire scope of intergovernmental relations (IGR) or “interlocal” relations, as it is sometimes known, takes on new importance and meaning in today’s complicated political and economic environment. At the root of the issues surrounding interlocal relations are the transfers of vast governmental funds, differences in attitudes about the best way to distribute the funds, and struggles over who should administer and control them. Intergovernmental transfers of funds are the source of more than half of the local street, bridge, and road expenditures made by local governments in Indiana. At the local level, the authority to enter into interlocal agreements (IC 36-1-7) enhances the opportunity for local public agencies to leverage resources, use economies of scale, and multiply the effects of modern technology to perform services and manage capital projects. Intergovernmental cooperation, along with the tools it provides, is simply good policy and leads to strong, solid local government.

In his book, *Understanding Intergovernmental Relations*, Deil S. Wright explains the subject by answering the following questions: (Wright 1988, 12).

- *Who participates in intergovernmental relations?* Intergovernmental relations involve citizens and public officials, as well as governmental entities of all sizes, types, and locations.
- *Where do intergovernmental relations take place?* Intergovernmental relations are everywhere in our political and administrative systems. Like yeast in bread, IGR penetrate and leaven the whole governmental loaf.
- *When do intergovernmental relations happen?* Intergovernmental relations are current, focusing as they do on critical issues of public policy. But intergovernmental relations also have substantial roots in the past and will have important consequences for how we cope with the future on such issues as education, environment, health, transportation, welfare, and the like.

The Indiana Local Technical Assistance Program (IN-LTAP) takes on intergovernmental roles in the execution of its mission of providing training and technical assistance to Local Public Agencies. LTAP conducts training workshops for these officials throughout the State of Indiana. These photos taken during one of the IN-LTAP annual local budgeting workshops illustrate the spirit and need for this training.

- *What are intergovernmental relations?* How can intergovernmental relations be systematically defined? William Anderson defined IGR as “an important body of activities or interactions occurring between governmental units of all types and levels within the (U.S.) federal system (Quoted from Wright 1988, p. 13; taken from Anderson 1960)

Funding Issues and Intergovernmental Relations

As noted previously, intergovernmental transfers of funds are a significant source of local governments’ funding for local road, bridge, and street improvements. Local officials try to gain some leverage in accomplishing local-level tasks through joining their efforts with those of state and federal entities. For example, local officials may engage in joint planning and purchasing or collaborative public works projects. As we might assume, most issues among federal, state, and local entities revolve around funding, especially the rules governing the process. As a result, local public agency interactions with state, federal, and other local governments about finance, purchasing, strategic planning, and provision of joint services can generate increasingly complex, and sometimes tense, relationships. Complexity and tensions are compounded if federal and state resources are scarce and ballooning local needs chase too few dollars. To reduce misunderstandings when enlisting state and federal aid, local officials might benefit by a better understanding of the differences and similarities in funding procedures followed by various governmental entities. The Indiana Advisory Commission on Intergovernmental Relations, established in 1995, works to research and publish information in this area.

Organizational behavior of the many units of governments is unique to each, and difficulties local officials face in understanding the various operating methods from one state or federal agency to the next can make the political environment challenging. However, political relations involve interpersonal relations. As local officials and their staffs become familiar with each agency’s operations, they are advised to employ personal contact, coordination, well-planned information meetings, briefings, and timely updates to smooth their interagency relations and produce more effective interaction. The result is more friendly, efficient, and effective local government.

Homeland Security

The events of September 11, 2001, put the subject of intergovernmental relations into sharp relief. The devastating attack on the financial nerve center of New York City produced poignant photographs, indelible in the minds of many. We cannot erase the pictures of destruction, but we can look for meaning beneath them. We can find hope, knowing that people worked to rescue those injured, cleaned up the debris, and diligently found and secured evidence of guilt. An enormous number of workers within law enforcement, disaster relief agencies, and transportation organizations, along with engineers and scientists—people within all levels of government at the national, state, and local levels—along with countless private individuals, cooperated together to overcome the effects of the dastardly attack on the United States. Indiana's local public agencies could learn much from how they accomplished such a large-scale, coordinated effort. Because the potential for another terrorist attack is always with us, it is important to the well-being of our nation that we understand how the communications matrix affects intergovernmental relations when we face national disasters. To this end, Chapter 8, "Risk Management and Transportation Security," features Homeland Security among its topics. In today's world, state and local transportation entities inhabit a truly intergovernmental environment.

Federal Intergovernmental Relationships

Several organizations function nationally to ensure adequate transportation within the United States. They function under the aegis of one central agency and work in different ways to make the highways, roads, and bridges of our nation the best the world has to offer.

The Federal Highway Administration

The Federal Highway Administration (FHWA) is a part of the U.S. Department of Transportation. The FHWA has its headquarters in Washington, D.C., with field offices located throughout the United States. FHWA's vision (FHWA 1999) is to:

"create the best transportation system in the world for the American people through proactive leadership, innovation, and excellence in service."

The FHWA continually provides expertise, resources, and information to improve the quality of the nation's highway system and its intermodal connections. It undertakes its mission in cooperation with all partners to enhance the country's economic vitality, quality of life, and environment.

The FHWA performs its mission through two main programs: the Federal-Aid Highway Program and the Federal Lands Highway Program. The Federal-Aid Highway Program assists the states in constructing and improving the National Highway System (NHS), their urban and rural roads, and their bridges. The program provides funds for general improvements and development of safe highways and roads. The Federal Lands Highway Program provides access to and within national forests, national parks, Native American reservations, and other

public lands by preparing plans, letting contracts, supervising construction facilities, and conducting bridge inspections and surveys. The FHWA supports all these programs by conducting and managing a comprehensive research, development, and technology program.

The FHWA administers the Federal Aid Highway Program through the Federal Aid Policy Guide (FAPG), which contains all of the policies and guidance followed by the FHWA in managing the program. The Federal Aid Highway Policy Guide is available by accessing <http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm/> FHWA programs are determined by legislation crafted by the U.S. Congress and the executive branch of the federal government. The Transportation Equity Act for the 21st Century, or TEA-21, (P.L. 105-178), enacted on June 9, 1998, currently guides Federal-Aid Highway Programs, replacing the role of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

The FHWA organization consists of its Washington headquarters, four resource centers, its Federal-Aid Division offices, and its Federal Lands Highway Division offices. The Washington headquarters sets overall policy and program direction. The four resource centers support the state-level division offices in their primary function of program delivery to FHWA partners and customers. The centers provide leadership on strategic initiatives and expert assistance on technical, process, and program issues. The division offices include 52 operating Federal-Aid Division offices and three Federal Lands Highway Division offices. These organizations carry out the Federal-Aid and the Federal Lands Programs, respectively. Details of FHWA programs and organization, including up to the minute information, are available by accessing <http://www.fhwa.dot.gov/index.html/>

FHWA Regional and State Divisions

The FHWA provides technical assistance through its central, regional, and state field offices for:

- Roadway and bridge design.
- Construction and maintenance.
- Value engineering and other project and program evaluation tools.
- Policy and planning.
- Highway safety.
- Intelligent transportation systems.
- Environmental protection and enhancement.
- Innovative financing.
- Land acquisition.
- Research, development and technology transfer.

The Indiana Division office of the FHWA, headquartered in Indianapolis, is one of 52 division offices. It is responsible for administering the Federal-Aid Highway Program in Indiana. The field office performs its duties in partnership with the Indiana Department of Transportation (INDOT), the state's metropolitan

planning organizations (MPOs), and numerous other partners and customers. The division's "Telling Our Story" stated its role as the steward of the National Highway System by promoting technical assistance to customers and partners in a variety of subject areas. The website address of the Indiana Division of the FHWA is <http://www.fhwa.dot.gov/indiv/index.htm/>

Indiana's National Highway System

The NHS is a 160,000-mile (257,000-kilometer) national network of interstate highways, other primary routes, and interposing connections. Indiana's NHS covers 2,800 miles (4,500 km) statewide. Indiana is often referred to as the "*Crossroads of America*" because of its transportation connections (particularly interstate highways). The state is home to the nation's thirteenth largest federally assisted transportation program, bringing in approximately \$660 million annually.

The FHWA Local Technical Assistance to Road and Street Entities

Most important to Indiana local governments is FHWA's Local Technical Assistance Program (LTAP), which was originally established in 1982 as the Rural Technical Assistance Program (RTAP). An initiative of the 1991 ISTEA, the program was modernized and greatly expanded. Nicknamed "T-Squared," for "technology transfer centers," the LTAP centers enable local transportation agencies to access improved highway technology in meeting the growing demands placed on local roads, bridges, and methods of public transportation. Currently performing this function are 51 T-Squared centers in the United States and the territory of Puerto Rico, along with six regional centers serving Native American governments.

The Indiana Local Technical Assistance Program (IN-LTAP), formerly the Highway Extension and Research Project for Indiana Counties and Cities (HERPICO), has served local highway and street departments in Indiana for more than 40 years. Working closely with the School of Civil Engineering at Purdue University and the Indiana Department of Transportation, the IN-LTAP provides technical assistance and training to the highway, road, and street departments of all 92 counties, 117 cities, and more than 450 towns in Indiana. These local agencies are responsible for Indiana's more than 80,000 miles of roads and streets and more than 12,000 bridges.

IN-LTAP provides technical assistance through training programs conducted at Purdue University and throughout the state; topical workshops and seminars on subjects pertaining to roads and streets; regular newsletters; and periodic publications. IN-LTAP has also conducted a number of workshops on budgeting, work zone safety, equipment specifications and demonstrations, asset management, and other subjects. The organization also produces a number of technical publications, as well as a quarterly newsletter, *The Pothole Gazette*, in addition to maintaining a library of materials available to local governments. The Indiana LTAP website is continually updated. Access at <http://www.purdue.edu/INLTAP/>

State—Local Intergovernmental Relationships

INDOT provides technical assistance to counties, cities, and towns in the following areas:

- Engineering and consultation
- Road and street inventory
- Management
- Programming
- Personnel
- Finance
- Administration of local projects funded by the Federal-Aid Highway Program

Counties may use INDOT's facilities for testing highway construction and maintenance materials or for other appropriate highway, road, or street purposes. INDOT also contracts with educational institutions and private agencies to provide research information to county highway officials and their staff members. Furthermore, the state agency uses district meetings, conferences, and training seminars to disseminate information and advice concerning the planning, design, construction, operation, maintenance, financing, and administration of highways, streets, and roads. Local officials can obtain up-to-date information about available INDOT assistance from the Local Transportation Section and its adjuncts, the local assistance coordinators, found in the INDOT district offices.

The INDOT Deputy Commissioner for Highway Operations is responsible for managing the operation of seven districts. Six of the seven are subdivided into local subdistricts. The numbers of subdistricts vary depending on highway inventory and geography. The districts are responsible for organizing and managing highway construction, maintenance, traffic, development, and testing. A director heads each district with a staff of an administrative manager and engineers in construction, operations, materials testing, traffic, and development. The number of staff members in the district offices varies depending on the size of each district.

The districts also monitor development and implementation of federally funded local construction projects. The deputy commissioner/chief engineer and the division chiefs jointly administer municipal and county federally funded highway construction projects, and each highway district's construction engineer and the INDOT Local Transportation Section monitor local public agency consultant agreements.

It is the further responsibility of highway districts to provide emergency and disaster assistance when the Governor authorizes it. The districts are also expected to keep the state highways in their areas open and passable during extreme weather. Highway districts may additionally initiate land purchases required for highway projects in conjunction with the FHWA Division of Land Acquisition.

Indiana Department of Transportation Organization Chart

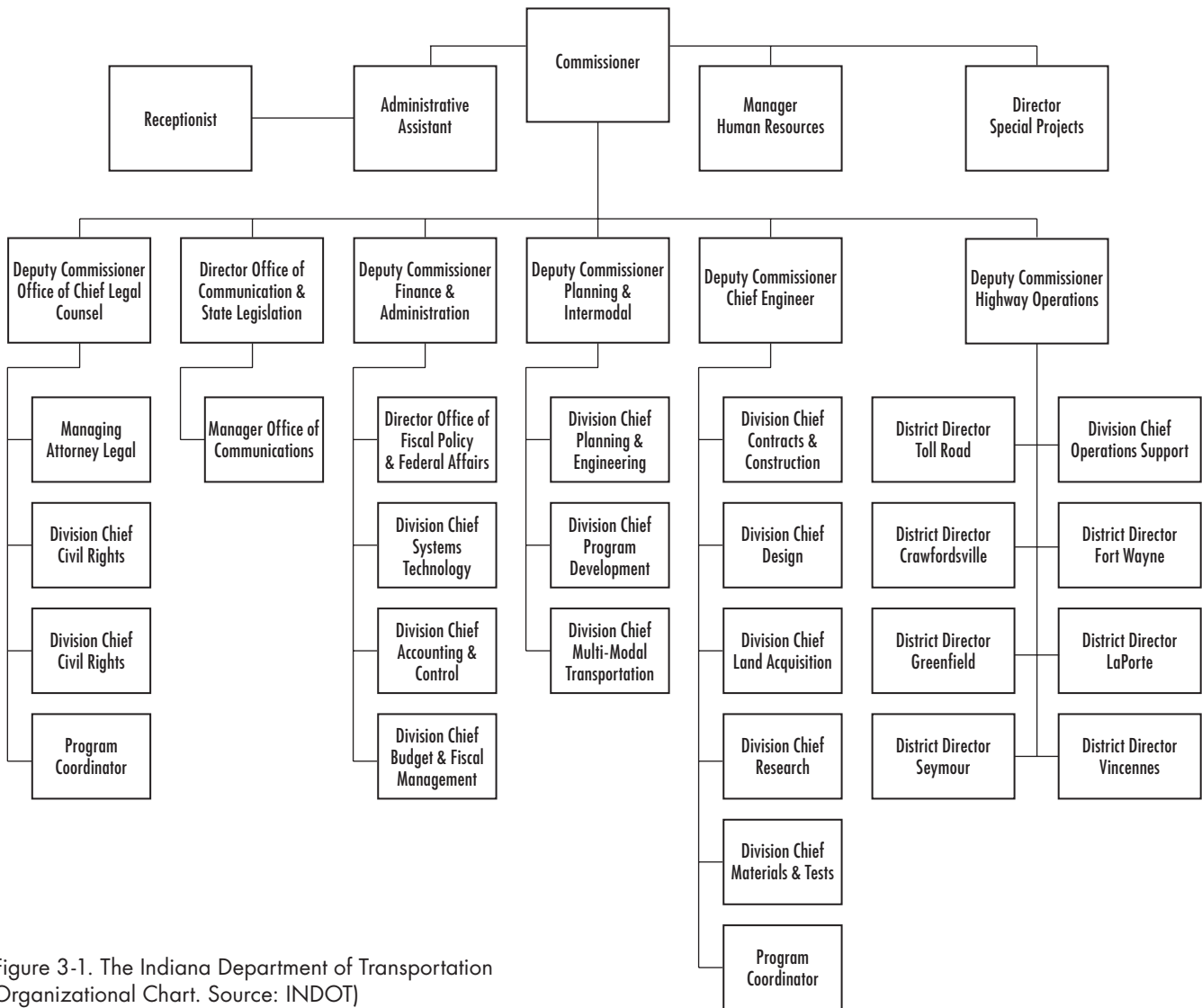


Figure 3-1. The Indiana Department of Transportation Organizational Chart. Source: INDOT)

Interlocal Cooperation at the Local Level

Units of government may be colocated or contiguous. Many units of government may have overlapping functions, so one way to reduce costs and duplication of effort is for similar units to join forces, as Indianapolis and Marion Counties have done, or more recently, Louisville and Jefferson Counties in Kentucky. However, for a number of both good and specious reasons, this type of governmental combination has not been popular, so motivation remains low for governmental units to combine services.

The Interlocal Cooperation Act (IC 36-1-7) provides the authority and outlines the procedures for establishing cooperative interlocal services. The guiding idea behind creation of the law was that anything governmental units can do separately; they can do together (IACT 1999, 126).

County-Municipal Cooperation

Legally mandated relationships between counties and the municipalities within county boundaries are few in number. Cities are not “creatures of the county,” and thus the county has no inherent powers of supervision and control. Counties do collect and distribute property taxes on behalf of municipalities. Also, although certain state funds are issued to the municipalities through the counties, the counties neither exercise discretionary power over which municipalities receive the funds nor determine the dollar amounts distributed.

Traditionally, the county’s interest does not enter municipal street activities. However, the Interlocal Cooperation Act of 1980 (IC 36-1-7) provides that Indiana municipalities and the executive of the counties in which they are located may enter into contractual relationships and other agreements with each other. Often small municipalities, having little street mileage and a limited road and street staff budget, will contract with

their respective county highway departments for maintenance of municipal streets. This arrangement benefits both the county and municipality because the municipality receives services at minimal cost, and counties can recover some of their investment in equipment and personnel.

Multilocal Public Agency Cooperation

The cities, towns, and counties of Indiana must often coordinate with one another to solve joint local problems. Most local agreements do not extend beyond the practical matters of maintaining or improving boundary roads and providing common services, such as fire and rescue. In addition, they make many informal arrangements to share equipment and personnel. Occasionally, the arrangements involve no money, but more frequently one unit reimburses another. Interlocal arrangements are also made to secure emergency assistance during periods of inclement weather.

Small municipalities often find it financially impractical or impossible to buy the supplies or equipment necessary to maintain their own streets and roads. However, **IC 36-1-7** allows cooperative arrangements between Indiana governmental entities. Copurchasing involves two or more public agencies working together through an interlocal agreement. They agree to share costs and coordinate planning and administration to obtain a facility or service of mutual benefit that a single governmental entity could not as readily obtain on its own. Thus, interlocal agreements concerning supplies, equipment, and personnel can reduce material and administrative costs to manageable levels for a small municipality.

The large expense of supplies and equipment required to construct and maintain local streets and roads should motivate small municipalities to use cooperative purchasing and sharing of resources as often as possible. It is important for governmental entities to coordinate with the Indiana Department of Transportation at the point of inception of an interlocal agreement rather than at its completion because the department assists the entities in ensuring compliance with the requirements of the relevant statutes. For example, the statutes mandate that joint highway construction and maintenance agreements cannot be made for a period of more than four years and that the county-furnished functions and services must be specified along with other appropriate matters. The parties cannot ignore or neglect such matters in forming an interlocal agreement.

A joint county-municipal highway construction and maintenance agreement may provide for the distribution of funds from the motor vehicle highway account, and the local road and street account be made to the county. An agreement may provide for the distribution of funds from the county motor vehicle highway account to a municipality's street and road account. The agreement may further stipulate that the municipality use specified portions of those distributions for purposes listed in the agreement. Furthermore, the fiscal bodies of each entity entering into a joint county-municipal highway construction and maintenance agreement must



Figure 3-2. Highway Districts. Source INDOT and IN-LTAP

approve the agreement, the county recorder must record it, and the responsible parties must file it with the executive of the municipality, as well as with the auditors of both the county and the state.

Agencies and Associations Cooperation

Government and transportation officials represent the interests of cities and towns of all sizes, as they attend some of the many venues for sharing information, training, cooperating, and representing these interests to state and federal government.

The Indiana Advisory Commission on Intergovernmental Relations

In 1995, the Indiana General Assembly established the Advisory Commission on Intergovernmental Relations (IACIR) to provide a forum to plan for and address the problems that might arise as greater demands are made on state and local governments. The intergovernmental advisory commission is one of 20 commissions established so far. The mission of the IACIR is to create effective communication, cooperation, and partnerships between the federal, state, and local units of government to improve delivery of services to the citizens of Indiana.

The commission accomplishes its mission by working to achieve the following goals:

- Better understanding of the process of government and the intended and unintended outcomes of policy decisions
- Better communication between all levels of government and citizens
- Long-term planning between all levels of government
- Applied research on policy areas to better understand the impacts of mandates and policy changes

The General Assembly charged the Indiana University Center for Urban Policy and the Environment with the responsibility of providing staff and support to the IACIR. The center's mission is to work with state and local governments and their associations, neighborhood and community organizations, community leaders, and business and civic organizations in Indiana to identify issues, analyze options, and develop the capacity to respond to challenges.

The Center for Urban Policy and the Environment, as part of the School of Public and Environmental Affairs, has operated since May 1992 on the Indiana University-Purdue University (IUPUI) Campus in Indianapolis. The center brings together the resources of the university and the I. U. School of Public and Environmental Affairs, as well as other campuses and schools throughout the state. It helps them improve public policy discourse and decision making through service and both scholarly and applied research publications, which are available for order online. Local public officials can learn more about the commission and the center by checking the website at the Internet address <http://iacir.spea.iupui.edu/about.htm/> or by writing to:

John Krauss at krauss@iupui.edu.
Indiana Advisory Commission on Intergovernmental Relations
Center for Urban Policy and the Environment
School of Public and Environmental Affairs
342 North Senate Avenue
Indianapolis IN 46204-1708
Telephone: 317.261.3050

Association of Indiana Counties, Inc.

The Association of Indiana Counties, Inc., headquartered in Indianapolis, represents the interests of county government. County officials from member counties meet once a year, and district meetings are conducted twice a year. A legislative committee formulates priorities and determines its positions on various issues of interest to counties. During the legislative session of 1984, the association was influential in the passage of the county option income tax. The association has also been very effective in providing needed information concerning legislative changes and related local government policy issues. The Association of Indiana Counties is a member of the National Association of Counties and works closely with that organization. Check <http://www.indianacounties.org/index.html> for more information.

Indiana Association of County Commissioners

The goal of the Indiana Association of County Commissioners is the promotion, preservation, and improvement of the "county commissioner" form of county government. The association promotes the cooperation of the county unit with all other local government entities and with state and federal agencies. The organization furthers its goal of assisting and promoting the improvement and efficiency in delivering county government services by disseminating guidelines and advice about the functions and responsibilities of county commissioners. District meetings, area meetings, the Commissioner's Winter Conference, the Purdue Road School, and other regional and national meetings all provide forums for the organization. More information about the Indiana Association of County Commissioners is available at the Internet address <http://www.indianacountycommissioners.org/>

Indiana Association of Cities and Towns

The Indiana Association of Cities and Towns, located in Indianapolis, is a nonprofit, unincorporated association, owned by the cities and towns of Indiana. Among the goals of the association are to:

- Represent cities and towns in the Indiana General Assembly.
- Disseminate information.
- Provide training programs.
- Provide technical assistance.

The most important objective of the association, however, is to represent and protect the interests of Indiana cities and towns in proposed legislation. The organization also provides information in the form of newsletters and bulletins. Member cities and towns may refer difficult questions of a legal nature to the association staff attorney for comment. Access <http://www.citiesandtowns.org/> for more information.

Council of State Governments

Located in Lexington, Kentucky, the Council of State Governments has a governing board of 50 state governors and two legislators per state. The council exists to strengthen state governments by improving administrative and managerial capacity and performance; promoting intergovernmental cooperation; collecting, processing, generating, and disseminating information needed by states; and a variety of other services. The group meets annually at its conference. Check <http://www.csgwest.org/> for more information.

U.S. Conference of Mayors

Located in Washington, D.C., and founded in 1932, the U.S. Conference of Mayors represents cities of more than 30,000 people. The conference promotes cooperation between the municipal governments of cities and the federal government and provides education information, technical assistance, and

legislative services to cities. In 1985, the conference consisted of 600 mayors and a staff of 45. More information on the conference is available at <http://usmayors.org/uscm/home.asp/>

National League of Cities

The purpose of the National League of Cities is to collect and exchange information concerning municipal affairs. The league is very active in advocating city interests before state governments and the federal government. Membership is open to all cities of any size. Access http://www.nlc.org/nlc_org/site/ for more information.

National Association of Counties

The National Association of Counties consists of elected and appointed county governing officials, other county officials, and deputy officials who function at the management or policy-making level. The association provides research and reference services for its members and represents them at the national level. The Internet address <http://www.naco.org> contains more information.

Resolutions, Ordinances and Interlocal Agreements

(See also Chapter 2, Local Authority)

The examples below illustrate typical provisions of frequently written interlocal agreements.

Sample Ordinance or Resolution Authorizing Interlocal Agreements

Purpose

To authorize the county of (x) to enter into an interlocal agreement with (City, Town, Municipality) of (x) for joint construction and maintenance of local roads, highways, bridges, and streets.

Authorization

The Board of County Commissioners is hereby authorized to initiate negotiations and to complete the agreement in accordance with Indiana law and this ordinance. Once the agreement is completed, the Board of County Commissioners will formally approve it, during either a regular or special session, in accordance with the administrative rules for county government bodies and Indiana statutes.

Negotiations

During negotiations, early coordination will be effected with the Local Assistance Division of the Indiana Department of Transportation, and INDOT or state agencies as appropriate to ensure compliance and consonance with both state and federal statutes and regulations.

Contents

The Board of County Commissioners will ensure that the joint highway construction and maintenance agreement provides for a maximum term of four (4) years, and that it clearly specifies the functions and services the county will furnish on behalf of the municipality (and vice-versa). The agreement may include any other appropriate matters. The joint agreement will provide for funding either by stipulating distribution of motor vehicle highway account funds and local road and street funds or both to the county; or that the municipality appropriate a specified part of the distribution from the same account to the purposes listed in the joint agreement. (Note: The funding can be stipulated in the ordinance or it can be a negotiable matter.) In accordance with **IC 36-1-7-10**, the fiscal body of both the county and the municipality must approve the joint highway construction and maintenance agreements.

Recording

When completed, the joint agreement will be recorded with the county recorder and filed with the executive of the municipality, the county auditor, and the auditor of the state.

Repealer

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Severability

The adjudgment of any provision or part of the ordinance as unconstitutional will not affect the validity of the ordinance as a whole or any section or provision not specifically adjudged invalid or unconstitutional.

Sample Agreement for Joint Highway Construction and Maintenance

Interlocal Agreements

The Indiana statutes (**IC 36-1-7-3**) provide minimum standards for the contents of joint agreements, generally, and for joint highway construction and maintenance agreements, specifically. Generally, joint agreements must provide the:

- *Duration of the Agreement:* Four years in the case of joint county-city highway, street and road construction and maintenance.
- *Purpose of the Agreement:* At this point, the parties to the agreement should provide a statement of the purpose and goals for their joint agreement.
- *Provisions for Finance, Staff, and Supplies:* Here the parties can explain the manner of financing, staffing, and supplying, along with the budget process they propose to use.
- *Methods of Dissolving the Agreement at Termination and Disposition of Property:* At this point, the agreement should specify the methods that will be employed in partially or completely

terminating the agreement and in disposing of property acquired during the agreement.

- *Administration:* The entities involved should specify how the provisions of their agreement will be administered. For example, will the administrator(s) be a separate entity or a joint board?
- *Real and Personal Property:* Parties to the agreement should explain the manner of holding, acquiring, and disposing of real and personal property that will be used when a joint board is included in the administration of the agreement.

Other appropriate matters may be itemized here.

- *Statement of Required Approval and Public Notice:* Parties to the agreement should itemize their steps in following the required approval process and in executing the requirement for giving public notice.

Some Final Thoughts

Although we gave the subject some special and philosophical treatment in this chapter, the thread of intergovernmental relations weaves its way throughout this manual, as it does throughout all levels of government in the United States. It has been a very long time since local governments were isolated from other governing bodies, both horizontally and vertically. The fact of governmental interdependence has become a prevalent truth in the environment in which we live.

Questions and Answers About Intergovernmental Relations

The questions that follow concern federal and state cooperation with local governments and intergovernmental transfer of roads and streets.

Federal and State Cooperation with Local Governments

Q: What is the authority of local governments' highway authorities in cooperating with federal authorities?

Answer: The highway authorities of the state, counties, cities, and towns—acting alone or in cooperation with one another or with a federal, state, or local agency of any other state—are authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use whenever such authorities feel that present or future traffic conditions will justify special facilities (IC 8-23-8).

Q: Can local governments enter into agreements with federal authorities?

Answer: Yes. IC 8-23-8 provides the authority for local governments to enter into agreements with federal authorities. But parties entering into agreements must comply with many state and federal laws or regulations.

They must consider the laws regarding financing, planning, establishing, improvement, maintenance, use, regulation, and vacation. Also, within cities and towns, such authority shall be subjected to municipal consent, as may be provided by law (IC 8-23-8-6).

Q: Is there a requirement that a state agency review such agreements?

Answer: If an agreement concerns the provision of services or facilities that a state officer or state agency has power to control, the agreement must be submitted to that officer or agency for review and approval before it can officially take effect (IC 36-1-7-5).

Q: Who is responsible for the maintenance of county roads used as detours for state highways under repair?

Answer: For those county roads designated as official detour routes under the provisions of the statute IC 8-23-21, the department is responsible for keeping the route "in a reasonable state of repair at all times while the highway is being used as an official detour route" (IC 8-23-21-1). The route will be restored, as agreed in writing, by the department and the county before the detour route is closed. Even though many unofficial detour routes may be established by motorists during the construction, the department is responsible for restoring only one unofficial detour route for each official detour route." (IC 8-23-21-2)

Q: Through what funding resources does the Indiana Department of Transportation (INDOT) provide Local Assistance?

Answer: INDOT provides assistance to local road and street departments as budgeted by the state and manages the allocation of federal-aid funds to local public agencies. The department's statute also provides for cooperation with Purdue University in the areas of research and local assistance through the Indiana Local Technical Assistance Program (IN-LTAP), which is housed at Purdue.

Intergovernmental Transfer of Roads and Streets

Q: Can roads and highways be transferred between systems?

Answer: Yes, governmental entities may transfer roads and highways between systems. For example, if the Department of Transportation determines that a portion of the state highway system no longer meets the criteria established by IC 8-23-4-10 but that the highway continues to serve a useful purpose, it may transfer that portion of the system to a county highway system or to a city or town street system. Also, if a county, city, or town determines, because of a change in general function or use, that an arterial or local road serves a state function, the governing body may transfer that portion of the arterial or local road system to the state (IC 8-23-4-11).

Q: How do governmental entities accomplish such transfers?

Answer: To transfer roads or streets between systems, both the transferring agency (or other unit of government) and the agency or unit assuming jurisdiction over the road or street must sign a memorandum of agreement. The memorandum should state the purpose of the transfer, the effective date of the transfer, and any conditions agreed to by the signers (IC 8-23-4-12).

Interlocal Cooperation at the Local Level

Q: What is the nature of cooperation between counties, cities, and towns on street and road projects?

Answer: IC 36-1-7-9 allows for an agreement between an Indiana municipality and the executive of the county for highway construction, maintenance, and related matters. The agreement must provide the following items of information:

- The duration of the agreement, which may not be more than 4 years
- The specific functions and services the county will perform or furnish on behalf of the municipality

Q: What must be done in order for such agreements to take effect?

Answer: Before an agreement takes effect, four conditions must be satisfied:

- The fiscal body of each governmental unit must approve the agreement.
- The county recorder must record the agreement.
- The responsible officials must file it with the executive of the municipality and the auditor of the county
- The officials must also file the agreement with the auditor of the state (IC 36-1-7-10).

Q: What governmental units are authorized to enter into joint agreements?

Answer: Indiana political subdivisions and one or more other governmental entities are allowed to enter into joint agreements. They must, by ordinance or resolution, enter into a written agreement. If Indiana governmental entities want only to buy, sell, or exchange services, supplies, or equipment between or among themselves, they may enter into contracts to do so (IC 36-1-7-2).

Q: Must the attorney general approve joint agreements concerning streets and roads?

Answer: Not if an agreement has these three characteristics:

- The agreement involves only Indiana political subdivisions.
- The fiscal body of each party approves the agreement.

- The agreement delegates to the treasurer or disbursing officer of one of the parties the duty to receive, disburse, and account for all monies of the joint undertaking.

However, if the agreement does not involve only Indiana political subdivisions, the responsible parties must submit it to the Attorney General's office for approval (IC 36-1-7-4).

Intergovernmental Relations Statutes

IC 8-10-1. Indiana Port Commission, Organization

Sec. 1. In order to promote the agricultural, industrial and commercial development of the state, and to provide for the general welfare by the construction and operation, in cooperation with the federal government, or otherwise, of a modern port on Lake Michigan and/or the Ohio River, and/or the Wabash River, with terminal facilities, to accommodate water, rail, truck and air-borne transportation the Indiana Port Commission is hereby authorized and empowered to construct, maintain and operate, in cooperation with the federal government, or otherwise, at such location on Lake Michigan and/or the Ohio River, and/or the Wabash River, as shall be approved by the governor, public ports with terminal facilities and traffic exchange points for all forms of transportation, giving particular attention to the benefits which may accrue to the state and its citizens from the St. Lawrence Seaway and to issue port revenue bonds of the state payable solely from revenues, to pay the cost of such projects.

(Formerly: Acts 1961, c.11, s.1; Acts 1963, c.395, s.1; Acts 1965, c.224, s.1; Acts 1969, c.387, s.1; Acts 1971, P.L.88, SEC.1.)

IC 8-10-1-2

Sec. 2. As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(g) The word "public roads" shall include all public highways, roads, and streets in the state, whether maintained by the state, county, city, township or other political subdivision.

(Formerly: Acts 1961, c.11, s.2; Acts 1965, c.224, s.2; Acts 1969, c.387, s.2; Acts 1971, P.L.88, SEC.2.)

IC 8-10-1-5

Sec. 5. (a) The Indiana port commission may:

(1) prepare sketches, plans, and descriptive material relating to such ports, or port projects, as in its discretion may seem feasible, to compile data and prepare literature as to the necessity or advisability thereof, and to do other acts and things it considers necessary to promote such public port or port projects and deems to be in the public interest;

(2) carry on, in its discretion, negotiations and enter into agreements and contracts with the federal government or agencies of the federal government or an authority established under IC 36-7-23 for the building and construction of public ports including terminal facilities, to be located within Indiana, on Lake Michigan, the Ohio River, the Wabash River, or in waters adjacent to Indiana;

(3) locate and acquire a suitable site for such public port or port projects;

(4) construct, develop, maintain, and operate the same in cooperation with the federal government, any agency of the federal government, a corporation established under IC 36-7-23, or otherwise, in such a manner and on such terms as will, in the discretion of the commission, best serve the commercial, industrial, and agricultural interests of the state;

(5) provide adequate port and terminal facilities to accommodate water, rail, truck, and airborne transportation; and

(6) provide a traffic exchange point for all forms of transportation, giving particular attention to the benefits that may accrue to the state and its citizens by the opening of the St. Lawrence Seaway and river transportation.

(b) The title to all property included in any port project shall be taken in the name of, and shall be in, the state of Indiana.

(Formerly: Acts 1961, c.11, s.5; Acts 1963, c.395, s.2; Acts 1965, c.224, s.3; Acts 1969, c.387, s.3; Acts 1971, P.L.88, SEC.3.) As amended by P.L.346-1989(ss), SEC.5.

IC 8-10-1-8

Sec. 8. If the commission shall find it necessary to change the location of any portion of any public road, railroad, or public utility facility, it shall cause the same to be reconstructed at such location as the division of government having jurisdiction over such road, highway, railroad or public utility facility shall deem most favorable and of substantially the same type and in as good condition as the original road, highway, or railroad or public utility facility. The cost of such reconstruction, relocation, or removal and any damage incurred in changing the location of any such road, highway, railroad, or public utility facility, shall be ascertained and paid by the commission as a part of the cost of such port or port project. The commission shall have authority to petition the circuit court of the county wherein is situated any public road or part thereof, affected by the location therein of any port or port project, for the vacation or relocation of such road or any part thereof with the same force and effect as statutes in effect on March 2, 1961, to the inhabitants of any municipality or governmental subdivision of the state. The proceedings upon such petition, whether it

be for the appointment of appraisers or otherwise, shall be the same as provided by statutes in effect on March 2, 1961, for similar proceedings upon such petitions. In addition to the foregoing powers, the commission and its authorized agents and employees, after proper notice, may enter upon any lands, waters, and premises in the state for the purpose of making surveys, soundings, drillings, and examinations as are necessary or proper for the purposes of this chapter, and such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending; provided, that before entering upon the premises of any railroad, notice shall be given to the superintendent of such railroad involved at least five (5) days in advance of such entry, and provided, that no survey, sounding, drilling, and examination shall be made between the rails, or so close to a railroad track, as would render said track unusable. The commission shall make reimbursement for any actual damage resulting to such lands, waters, and premises and to private property located in, on, along, over, or under such lands, waters and premises, as a result of such activities. The state of Indiana, subject to the approval of the governor, hereby consents to the use of lands owned by it, including lands lying under water and riparian rights, which are necessary or proper for the construction or operation of any port or port project, provided adequate compensation is made for such use. The commission shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (referred to in this section as "public utility facilities") of any public utility in, on, along, over, or under any port or port project. Whenever the commission shall determine that it is necessary that any such public utility facilities which are, on or after March 2, 1961, located in, on, along, over, or under any such port or port project should be relocated or should be removed from such port or port project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the commission, provided, however, that the cost and expenses of such relocation or removal including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the commission as a part of the cost of such port or port project, excepting, however, cases in which such equipment or facilities are located within the limits of highways or public thoroughfares being constructed, reconstructed, or improved under the provisions of this chapter. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary

appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations subject, however, to the state's right of regulation under its police powers.

(Formerly: Acts 1961, c.11, s.8.) As amended by P.L.66-1984, SEC.3.

IC 8-10-1-10

Sec. 10. The commission is hereby authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights, right-of-ways, franchises, easements and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or port project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the commission and the owner thereof, and to take title thereto in the name of the state; the commission is hereby further authorized and empowered to sell, transfer and convey any such land or any interest therein so acquired, or any portion thereof, when the same shall no longer be needed for such purposes; and it is further authorized and empowered to transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any port or port project, or as otherwise required under the provisions of this chapter: Provided, That no such sale shall be made without the approval of the Governor first obtained and at not less than the appraised value established by three independent appraisers appointed by the Governor. The commission shall be authorized to restrict the use of any land so sold by it and provide for a reversion to the commission in the event the land shall not be used for the purpose represented by the purchaser, and such restrictions and reversions shall be set out in appropriate covenants in the deeds of conveyance, which deeds shall be subject to the approval of the Governor. The commission shall also be authorized to lease, or grant options to lease, to others for development any portion of the land owned by the commission, on such terms as the commission shall determine to be advantageous. All such leases or options to lease which leases cover a period of more than four (4) years shall be subject to the approval of the Governor. Leases of lands under the jurisdiction or control of the commission shall be made only for such uses and purposes as are calculated to contribute to the growth and development of the port and terminal facilities under the jurisdiction or control of the commission. In the event the commission shall lease to others a building or structure financed by the issuance of revenue bonds the rental shall be in an amount at least sufficient to pay the interest on and principal of the amount of such bonds representing the cost of such building or structure

to the extent such interest and principal is payable during the term of the lease, as well as to pay the cost of maintenance, repair and insurance for such building and a reasonable portion of the commission's administrative expense incurred during the term of the lease which is allocable to such building or structure.

(Formerly: Acts 1961, c.11, s.10; Acts 1972, P.L.66, SEC.1.)

IC 8-10-1-11

Sec. 11. The commission is hereby authorized and empowered to acquire by appropriation, under the provisions of the eminent domain law of the state, any land, including lands under water and riparian rights, property, rights, rights-of-way, franchises, easements or other property necessary or proper for the construction or the efficient operation of any port or port project. The commission shall also be empowered to exercise such powers of eminent domain as may be conferred upon the commission by an act of Congress of the United States now in force, or which may hereafter be enacted. Title to the property condemned shall be taken in the name of the state of Indiana. Nothing herein shall authorize the commission to take or disturb property or facilities constituting all or part of any presently existing or operating public port and nothing herein shall authorize the commission to take or disturb property or facilities belonging to any public utility or to a common carrier engaged in interstate commerce, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the commission excepting however, cases in which such equipment or facilities are located within the limits of existing highways or public thoroughfares.

(Formerly: Acts 1961, c.11, s.11.)

IC 8-10-1-21

Sec. 21. All counties, cities, towns, townships and other political subdivisions and all public agencies and commissions of the state, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the commission at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, townships, other political subdivisions or public agencies and commissions of the state may deem reasonable and fair and without the necessity for an advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property owned by any such municipality or governmental subdivision which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(Formerly: Acts 1961, c.11, s.21.)

IC 8-16-5

Chapter 5. Interstate Bridges Constructed by Local Units

IC 8-16-5-1

Sec. 1. Any county or municipality bordering on a stream which forms the boundary line between Indiana and any adjoining state, through its county executive may build and maintain a bridge across the river or stream, in cooperation with any contiguous governmental unit of the adjoining state. The contiguous unit must join in building and maintaining the bridge, and pay one-half (1/2) of the expense.

(Formerly: Acts 1920(2ss), c.25, s.1.) As amended by P.L.86-1988, SEC.34.

IC 8-16-5-3

Sec. 3. After action by the county executive certified to the county fiscal body, the county fiscal body shall appropriate, out of the money raised by taxation or realized from the sale of bonds under IC 8-18-22 or obligations, one-half (1/2) of the necessary money to build and maintain the bridge.

(Formerly: Acts 1920(2ss), c.25, s.3.) As amended by P.L.86-1988, SEC.36; P.L.113-1989, SEC.2.

IC 8-16-5-4

Sec. 4. The county executive of the county may plan all details, do all things necessary to carry out the work of constructing and maintaining the bridge, and cooperate with the contiguous governmental unit of the adjoining state in building and maintaining the bridge. (Formerly: Acts 1920(2ss), c.25, s.4.)

As amended by P.L.86-1988, SEC.37.

IC 8-23.

Indiana Department of Transportation

IC 8-23-1

Chapter 1. Definitions

IC 8-23-1-1

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.112-1989, SEC.5.

IC 8-23-1-7

Sec. 7. The definitions in IC 36-1-2 apply to this article.

As added by P.L.18-1990, SEC.165.

IC 8-23-1-8

Sec. 8. "Abandonment" means the cessation of use of right-of-way activity upon a site with no intention to reclaim or use the site again for highway purposes.

As added by P.L.18-1990, SEC.166.

IC 8-23-1-9

Sec. 9. "Adjacent area" means an area that is adjacent to and within six hundred sixty (660) feet of the nearest edge of the right-of-way of an interstate or primary highway.

As added by P.L.18-1990, SEC.167.

IC 8-23-1-10

Sec. 10. "Agency" has the meaning set forth in IC 4-22-2-3.

As added by P.L.18-1990, SEC.168.

IC 8-23-1-11

Sec. 11. "Arterial highway" means a highway designed primarily for through traffic, usually on a continuous route.

As added by P.L.18-1990, SEC.169.

IC 8-23-1-12

Sec. 12. "Arterial street" means a street designed primarily for through traffic, usually on a continuous route.

As added by P.L.18-1990, SEC.170.

IC 8-23-1-13

Sec. 13. "Authority" refers to the Indiana transportation finance authority established under IC 8-9.5-8-2.

As added by P.L.18-1990, SEC.171.

IC 8-23-1-14

Sec. 14. "Automobile graveyard" means an establishment or place of business that is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

As added by P.L.18-1990, SEC.172.

IC 8-23-1-14.5

Sec. 14.5. "Commerce corridor" means that part of a recognized system of highways that: (1) directly facilitates intrastate, interstate, or international commerce and travel;

(2) enhances economic vitality and international competitiveness; or

(3) provides service to all parts of Indiana and the United States.

As added by P.L.87-1991, SEC.1.

IC 8-23-1-15

Sec. 15. "Commissioner" refers to the commissioner of the department.

As added by P.L.18-1990, SEC.173.

IC 8-23-1-16

Sec. 16. "County arterial highway system" means a system of highways designated by the county highway authority as having the greatest general importance to the county and for which responsibility is assigned to the county highway authority.

As added by P.L.18-1990, SEC.174.

IC 8-23-1-17

Sec. 17. "County local highway system" means the roads and streets used primarily for access to residence, business, farm, or other abutting property and for which responsibility is assigned to the county highway authority.

As added by P.L.18-1990, SEC.175.

IC 8-23-1-18

Sec. 18. "Curb" means a stone or row of stones, or a similar construction of concrete or other material, along the margin of a roadway as a limit to the roadway and a restraint upon and protection to the adjoining sidewalk space.

As added by P.L.18-1990, SEC.176.

IC 8-23-1-19

Sec. 19. "Department" refers to the Indiana department of transportation established under IC 8-23-2-1.

As added by P.L.18-1990, SEC.177.

IC 8-23-1-20

Sec. 20. "Directional and other official signs and notices" includes signs and notices pertaining to natural, scenic, and historical attractions that are required or authorized by law and conform to the national standards adopted by the United States Secretary of Commerce under 23 U.S.C. 131(c).

As added by P.L.18-1990, SEC.178.

IC 8-23-1-21

Sec. 21. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish. The term does not include an activity performed as an incident to the change of an advertising message or normal maintenance or repair of a sign structure.

As added by P.L.18-1990, SEC.179.

IC 8-23-1-22

Sec. 22. "Executive" has the meaning set forth in IC 36-1-2-5. However, for a consolidated city, the term means the city-county council.

As added by P.L.18-1990, SEC.180.

IC 8-23-1-22.5

Sec. 22.5. "Extraordinary cost" means the cost to a utility to relocate existing facilities that is either:

(1) more than ten percent (10%) of the total operating revenue received by the utility during the utility's most recent full fiscal year; or

(2) more than fifty percent (50%) of the total estimated cost of a proposed highway or bridge construction or improvement project.

As added by P.L.63-1992, SEC.1.

IC 8-23-1-23

Sec. 23. "Highway, street, or road" means a public way for purposes of vehicular traffic, including the entire area within the right-of-way. However, the term does not include a highway for purposes of IC 8-2-1.

As added by P.L.18-1990, SEC.181.

IC 8-23-1-24

Sec. 24. "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within Indiana and providing other information that the department considers desirable.

As added by P.L.18-1990, SEC.182.

IC 8-23-1-25

Sec. 25. "Interstate system" means the part of the national system of interstate and defense highways located within Indiana as officially designated by the department and approved by the United States Secretary of Commerce under 23 U.S.C.

As added by P.L.18-1990, SEC.183.

IC 8-23-1-28

Sec. 28. "Limited access facility" means a highway or street designed for through traffic, over, from, or to which owners or occupiers of abutting land or other persons have either no right or easement or a limited right or easement of direct access, light, air, or view because their property abuts upon the limited access facility or for any other reason. The highways or streets may be parkways from which trucks, busses, and other commercial vehicles are excluded or freeways open to use by all customary forms of highway and street traffic.

As added by P.L.18-1990, SEC.186.

IC 8-23-1-29

Sec. 29. "Maintain" means allow to exist.

As added by P.L.18-1990, SEC.187.

IC 8-23-1-30

Sec. 30. "Main-traveled way" means the traveled way of a highway on which through traffic is carried. For a divided highway, the term includes the traveled way of each of the separated roadways for traffic in opposite directions. The term does not include frontage roads, turning roadways, or parking areas.

As added by P.L.18-1990, SEC.188.

IC 8-23-1-31

Sec. 31. "Municipal arterial street system" means a system of arterial streets and highways designated by the municipal street authority as having the greatest importance to the municipality and for which responsibility is assigned to the municipal street authority.

As added by P.L.18-1990, SEC.189.

IC 8-23-1-32

Sec. 32. "Municipal local street system" means roads and streets used primarily for access to residence, business, or other abutting property and for which responsibility is assigned to the municipal street authority.

As added by P.L.18-1990, SEC.190.

IC 8-23-1-33

Sec. 33. "Primary system" means the part of connected main highways as officially designated by the department and approved by the United States Secretary of Commerce under 23 U.S.C.

As added by P.L.18-1990, SEC.191.

IC 8-23-1-34

Sec. 34. "Road paving material" means bituminous or portland concrete surfaces.

As added by P.L.18-1990, SEC.192.

IC 8-23-1-35

Sec. 35. "Safety rest area" means an area or site established and maintained within adjacent areas by or under public supervision or control for the convenience of the traveling public.

As added by P.L.18-1990, SEC.193.

IC 8-23-1-36

Sec. 36. "Scrap metal processing facility" means an establishment having facilities for processing iron, steel,

or nonferrous metal and whose principal product is scrap iron, steel, or scrap for sale for remelting purposes only.

As added by P.L.18-1990, SEC.194.

IC 8-23-1-37

Sec. 37. "Secretary" refers to the United States Secretary of Transportation.

As added by P.L.18-1990, SEC.195.

IC 8-23-1-38

Sec. 38. "Sign" means an outdoor sign, display, device, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designated, intended, or used to advertise or inform.

As added by P.L.18-1990, SEC.196.

IC 8-23-1-39

Sec. 39. "State aid director" refers to the chief administrative officer of the office of the department that administers programs of state and federal aid to local units of government, or the officer's designee.

As added by P.L.18-1990, SEC.197.

IC 8-23-1-40

Sec. 40. "State highway system" means the system of highways and streets that are of general economic importance to Indiana as a whole and for which responsibility is assigned to the department.

As added by P.L.18-1990, SEC.198.

IC 8-23-1-40.5

Sec. 40.5. "Substantial completion" refers to the date, as determined by the department, when the construction of the contract is sufficiently completed in accordance with the plans and specifications, as modified by any change orders, so that the construction can be used for its intended purpose.

As added by P.L.117-1995, SEC.1.

IC 8-23-1-41

Sec. 41. "Transportation plan" means a statement evaluating transportation policy objectives and projecting specific long-range comprehensive actions to accomplish policy objectives.

As added by P.L.18-1990, SEC.199.

IC 8-23-1-42

Sec. 42. "Traveled way" means the part of the roadway for the movement of vehicles. The term does not include shoulders or auxiliary lanes.

As added by P.L.18-1990, SEC.200.

IC 8-23-1-43

Sec. 43. (a) "Unzoned commercial or industrial area" means an adjacent area not zoned under state or local statute, rule, or ordinance on which there is located one (1) or more permanent structures for commercial or industrial activities other than a sign or upon which a commercial or an industrial activity is actually conducted, whether or not there is a permanent structure located upon the adjacent area, and the area:

(1) extending six hundred (600) feet beyond the edge of the commercial or industrial activity as determined under subsection (c); and

(2) located along either side of an interstate or a primary highway.

The term does not include land contiguous to an interstate or a primary highway that has been designated as scenic by the state.

(b) The term does not include the following areas:

(1) Within three hundred (300) feet of a building used primarily as a residence, unless the owner of the building consents in writing to the particular commercial use.

(2) Within five hundred (500) feet of the following:

(A) A public park garden.

(B) A recreation area or forest preserve.

(C) A church or school.

(D) An officially designated historic battlefield, museum, or historical monument.

(E) A safety rest or recreation area, publicly owned, controlled, and maintained under 23 U.S.C. 319

(F) A sanitary or other facility for the accommodation of motorists, publicly owned, controlled, and maintained under 23 U.S.C. 319

(3) Within seven hundred fifty (750) feet of a strip of land in which an interest has been acquired by the state for the restoration, preservation, or enhancement of scenic beauty that is publicly controlled and maintained under 23 U.S.C. 319

(c) Distance from a commercial or an industrial activity described under subsection (a):

(1) must be:

(A) measured from the outer edges of the regularly used building, parking lot, storage areas, or processing areas of the commercial or industrial activity; and

(B) parallel to the edge of the pavement of the highway; and

(2) may not be measured from the property line of the commercial or industrial activity, unless the property line is located on an area described in subdivision (1)(A).

As added by P.L.18-1990, SEC.201. Amended by P.L.61-1996, SEC.11.

IC 8-23-1-44

Sec. 44. "Urban area" means:

(1) an urbanized area designated by the Bureau of the Census;

(2) if an urbanized area lies within more than one (1) state, the part of the area that lies within the boundaries of Indiana; or

(3) an urban place designated by the Bureau of the Census having a population of at least five thousand (5,000) that is not within an urbanized area and is within boundaries cooperatively established by the department and local officials.

As added by P.L.18-1990, SEC.202.

IC 8-23-1-44.5

Sec. 44.5. "Utility" has the meaning set forth in IC 8-1-9-2(a).

As added by P.L.63-1992, SEC.2.

IC 8-23-1-45

Sec. 45. "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity using the highway system.

As added by P.L.18-1990, SEC.203.

IC 8-23-1-46

Sec. 46. "Work program" means a schedule of steps to be followed in implementing a transportation plan, including the following:

(1) A description of the sequence of steps.

(2) The time limit within which each step is to be completed.

(3) The product of each step.

(4) The staff and resources required.

As added by P.L.18-1990, SEC.204.

IC 8-23-1-47

Sec. 47. "Zoned commercial or industrial areas" means those areas that are zoned for business, industry, commerce, or trade under a zoning ordinance.

As added by P.L.18-1990, SEC.205.

IC 8-23-2-14. Testing Support of LPAs

Sec. 14. The department may furnish on request of a county or municipality engineering service or consultation and extend the facilities of the department's testing laboratory for the testing of highway construction and maintenance materials or for any other highway purpose. When those services are rendered by the department, the county or municipality requesting and receiving the services shall reimburse the department

to the extent of the actual cost of the service including salaries or personal services. When payment is made to the department by the county or municipality, the department shall receipt the payments into the accounts or appropriations from which the expenditures were made by the department in providing those services.

As added by P.L.18-1990, SEC.211.

IC 8-23-6.

Chapter 6. State Highways in Municipalities

IC 8-23-6-1

Sec. 1. (a) The department shall select the route of highways in the system of highways under its control through cities and towns, and may change the routes as the department determines most convenient for public travel.

(b) Notwithstanding subsection (a) and in or near the city of Mishawaka, Indiana, the portion of Capital Avenue lying between:

(1) the most recently established US 20 bypass as of January 1, 1997; and

(2) the Indiana toll road; is designated state route number three hundred thirty-one (331).

(c) The department, to the extent of the funds available for the purpose, shall maintain and, as it determines necessary and as the funds required are available, may construct and improve the roadway of the streets or a part of the streets to the width determined by the department. As part of the construction work, the department shall construct within the limits of a street the curbs and gutters, manholes, catch basins, and the necessary drainage structures and facilities.

(d) Notwithstanding subsection (c), funds for the construction or improvement of the road designated as state route three hundred thirty-one (331) under subsection (b), to the extent funds are available for the construction or improvement, shall first be exhausted from:

(1) revenue declared excess by the Indiana toll road;

(2) federal aid designated for the local metropolitan planning organization;

(3) city and county highway funds used for such purpose; and

(4) revenue generated from local incremental finance districts;

before any funds designated to the department are used for construction or improvement of state route three hundred thirty-one (331).

As added by P.L.18-1990, SEC.215. Amended by P.L.89-1997, SEC.2.

IC 8-23-6-2

Sec. 2. If the construction of a street necessitates the construction of adequate connecting facilities outside the limits of the street to provide for drainage of the street, the necessary mains, laterals, and connections shall be provided for in the plans, included as part of the construction cost, and paid out of the department's appropriation. However, if the drainage facilities outside the street are to be used for a purpose or purposes in addition to that of draining the street, a proportionate share of the cost of construction shall be paid by the beneficiaries of the drainage other than the department in a ratio of the amount of waste water attributable to the other users as compared with the total capacity of the drainage facilities. The department shall determine the ratio. The department need not proceed with construction until the time that an agreement with the municipality has been effected concerning the payment of costs for drainage use other than that which is required for state highway drainage. If the construction of a street in the state highway system within the boundaries of a city or town necessitates the construction of a bridge, overhead or subway structure, and sidewalks are required as a part of the structure, the sidewalks shall be provided for in the plans, included as part of the construction cost, and paid out of the department's funds.

As added by P.L.18-1990, SEC.215.

IC 8-23-6-3

Sec. 3. (a) Whenever a street on the state highway system is located within the boundaries of a city or town and is occupied by the track or tracks of a street railway, interurban railway, or steam railroad, the department is not required to maintain, construct, or improve the part of the street between the track or tracks and for eighteen (18) inches on the outside of the outer rails. The department shall include as part of the construction cost and pay out of department funds any expenditures necessitated by the acquisition of sufficient rights-of-way to construct the street.

(b) If there are any tracks, pipes, or conduits in a street, the department may, after determining to construct or improve the street, require the owner to restore to good condition or renew the tracks, pipes, or conduits. The owner, within ninety (90) days after being notified to do so, shall restore or renew the tracks, pipes, or conduits. For tracks, the owner shall pave the part of the street between the rails of the tracks and eighteen (18) inches on the outside in conformity with plans approved by the department.

(c) If the construction work on tracks, pipes, or conduits involves work of a nature as to be impractical or impossible of performance as a separate unit, the department may by agreement with the owner perform

the work for which the owner shall reimburse the department for the cost.

(d) Upon the completion of a street, the department shall maintain the roadway of the street, including the curbs and gutters, catch basins, and inlets within the limits of the street or highway that form integral parts of the street or highway. The city or town shall maintain the sidewalks, grass plats, and the connecting drainage facilities.

(e) Whenever the department has responsibility for maintenance of a street within a city or town, the department shall regulate traffic in accordance with IC 9-21 on the street and may remove any hazard to traffic.

As added by P.L.18-1990, SEC.215. Amended by P.L.2-1991, SEC.64.

IC 8-23-6-4

Sec. 4. Whenever:

- (1) the department designates a business route or a special route as an alternate to a state highway;
- (2) the route is laid out through a city or town; and
- (3) no other state highway is routed over the business or alternate route;

the city or town is responsible for any improvements to or maintenance of the street.

As added by P.L.18-1990, SEC.215.

IC 8-23-6-5

Sec. 5. This chapter does not annul, limit, or abridge the right of a city or town, either at its own expense or at the expense of property owners subject to assessment, to improve the sidewalks and curbs along a street forming the route of a state highway, to construct sewers and drains, or to construct or maintain a part of the roadway of the street not improved or maintained by the department. The city or town shall provide adequate drainage for the street except as otherwise provided in this chapter. Except as expressly provided in this chapter and subject to IC 9-21, this chapter does not limit the right of a city or town to regulate traffic over a street over which a highway is routed or to relieve the city or town of liability now imposed by law. The cost of improvement, except as otherwise provided in this chapter, shall be paid for out of the funds appropriated to the department. Whenever a person, firm, limited liability company, or corporation, other than a municipal corporation, is required or obligated by a law, ordinance, or contract to keep in repair or to maintain or to construct a street, any part of a street, or any railroad, interurban railroad, or street railroad crossing, or any structure or bridge thereon, this chapter does not relieve the person, firm, limited liability company,

or corporation or the receiver thereof from the duty, obligation, or contract.

As added by P.L.18-1990, SEC.215. Amended by P.L.2-1991, SEC.65; P.L.8-1993, SEC.153.

IC 8-23-6-6

Sec. 6. (a) An opening may not be made in:

- (1) a highway in the state highway system;
- (2) the right-of-way of a state highway; or
- (3) the roadway of a street of a city or town over which a state highway is routed and which the department is required to maintain; and a structure or obstruction may not be placed in a highway or roadway of a state highway without the consent of the department. A highway or roadway may not be dug up for laying or placing a pipe, sewer, pole, wire, conduit, track, or railway or for any other purpose, and trees may not be removed from the right-of-way of a state highway without the written permit of the department, and then only in accordance with the rules of the department. The work shall be done under the supervision and to the satisfaction of the department, and the entire expense of restoring the highway or street in as good condition as before shall be paid by the person to whom the permit is given.

(b) The department may require, before the granting of a permit, that a sufficient bond be given, or cash deposit made, to insure the restoration of the highway or street. In granting a permit, the department may designate the place in the street, highway, or right-of-way thereof where the pipe, sewer, pole, wire, conduit, track, railway, or other device or thing may be constructed.

(c) A person who violates this section commits a Class C infraction.

As added by P.L.18-1990, SEC.215.

IC 8-23-8

IC 8-23-8-1

Sec. 1. The department and the highway authorities of the counties and municipalities, acting alone or in cooperation with each other or any federal agency, or state or local agency of another state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use on all or any part of a highway whenever the department or authority that has jurisdiction over the highway determines that traffic conditions, present or future, will justify the facilities. The department or a highway authority that has jurisdiction over a highway may regulate, restrict,

or prohibit the use of limited access facilities on that highway by various classes of vehicles or traffic.
As added by P.L.18-1990, SEC.217. Amended by P.L.87-1991, SEC.2.

IC 8-23-8-1.3

Sec. 1.3. (a) The department shall do the following:

- (1) Determine commerce corridors within Indiana.
- (2) Determine the level of service of each commerce corridor.
- (3) Establish procedures for maintaining the level of service in a commerce corridor.
- (4) Adopt an improvement plan for each commerce corridor that does not meet its prescribed level of service.

(b) The department may determine the feasibility of using recycled materials in the improvement of commerce corridors.

(c) Determinations under this section shall be in conformance with any similar highway designation made by the federal highway administration.

As added by P.L.87-1991, SEC.3.

IC 8-23-8-2

Sec. 2. The department and the highway authorities may divide a limited access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices and indicate the proper lane for traffic by appropriate signs, markers, stripes, and other devices.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-3

Sec. 3. (a) The department or a highway authority may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation for the laying out, widening, or improvement of highways and streets within their respective jurisdictions.

(b) In the acquisition of property or property rights for a limited access facility or a service road connected with a facility, the state, county, or municipality may acquire an entire lot, block, or tract of land, if the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for the right-of-way.

(c) Court proceedings necessary to acquire property or property rights under this section take precedence over all other causes not involving the public interest in all courts.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-4

Sec. 4. (a) The department or the highway authority of a county or municipality may designate and establish limited access facilities as new and additional facilities or may designate and establish an existing street or highway as included within a limited access facility.

(b) The department, county, or municipality may provide for the elimination of intersections at grade of limited access facilities with existing state and county roads and municipal streets by:

- (1) grade separation or service road; or
- (2) closing off the roads and streets at the right-of-way boundary line of the limited access facility.

(c) After the establishment of a limited access facility, a highway or street that is not part of the facility may not intersect the facility at grade.

(d) A municipal street, a county or state highway, or other public way may not be opened into or connected with a limited access facility without the prior consent of the authority having jurisdiction over the facility. Consent under this subsection may be given only if the public interest is served.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-5

Sec. 5. Whenever the department constructs a bypass highway around a municipality, the department shall designate the bypass highway as a limited access facility.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-6

Sec. 6. (a) The department may enter into agreements with a county, municipality, or the federal government concerning limited access facilities or other public ways under their jurisdiction under this chapter or any other state or federal law authorizing cooperation to carry out this chapter.

(b) A county or municipality may enter into agreements with the federal government concerning limited access facilities or other public ways under its jurisdiction under this chapter or any other state or federal law authorizing cooperation to carry out this chapter.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-7

Sec. 7. (a) The department, a county, or a municipality may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets, or designate as local service roads and streets existing roads or streets, and exercise jurisdiction over service roads under this chapter if the department, county, or municipality determines the service roads or

streets are necessary or desirable. The local service roads or streets must be:

- (1) of appropriate design; and
- (2) separated from the limited access facility by all devices designated necessary or desirable by the proper authority.

(b) The department, to permit the establishment of adequate fuel or other service facilities by private owners or lessees for the users of a limited access facility, shall provide for access roads within the state's right-of-way of a limited access facility at points that will best serve the public interest.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-8

Sec. 8. A person is not entitled to ingress or egress to, from, or across limited access facilities to or from abutting lands, except at designated access points, as specified by rule.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-9

Sec. 9. (a) A person may not do any of the following upon a limited access facility:

- (1) Drive a vehicle over, upon, or across a curb, central dividing section, or other separation or dividing line.
- (2) Make a left turn or a semicircular or U-turn except through an opening provided for the purpose in the dividing curb, separation, section, or line.
- (3) Drive a vehicle except in the proper lane provided for that purpose, in the proper direction, and to the right of the central dividing curb, separation, section, or line.

(4) Drive a vehicle into the facility from a local service road except through an opening provided for that purpose in the dividing curb, section, separation, or line that separates the local service road from the facility.

(b) A person who violates this section commits a Class C infraction.

As added by P.L.18-1990, SEC.217.

IC 8-23-9-56.

Sec.56. (a) The department may cooperate with and assist Purdue University in developing the best methods of improving and maintaining the highways of the state and the respective counties. In so cooperating with Purdue University and for the purpose of developing and disseminating helpful information concerning road construction and improvement and the operation of the highways of the state and the counties, the department may expend money annually from the funds appropriated to the department's use for the use and benefit of Purdue University in carrying on

programs of highway research and highway extension at or in connection with Purdue University and for the annual road school held at Purdue University. In addition, the money may be increased by federal funds, which may be made available to the department for the engineering and economic investigation of projects for future construction and for highway research necessary in connection therewith.

(b) For the purpose of disseminating knowledge of the highway maintenance methods that are best suited to the various sections of Indiana, the county and state highway officials, in cooperation with Purdue University, may hold joint road meetings in the various sections of Indiana.

(c) The aid authorized by this section shall be paid quarterly by the department to Purdue University upon proper voucher.

As added by P.L.18-1990, SEC.218.

IC 8-23-9-57

Sec. 57. The department may cooperate with the governing officials of state highway agencies and systems in one (1) or more other states or the Federal Highway Administration in research in conducting tests and experiments designed to develop the best methods of constructing, improving, and maintaining the highways in Indiana. In so cooperating with the governing officials of state highway agencies and systems in one (1) or more other states or the Federal Highway Administration and for the purpose of paying the proportionate share of this state of the cost of the tests and experiments, the department may expend the funds appropriated to its use.

As added by P.L.18-1990, SEC.218.

IC 8-23-21

IC 8-23-21-0.3

Sec. 0.3. As used in this chapter, "official detour route" means the path the department designates a motorist to use to reach a destination while a state highway, part of a state highway, or state highway bridge is closed to the public as a thoroughfare while under construction, while being repaired, or when closed for any other reason.

As added by P.L.120-1995, SEC.1.

IC 8-23-21-0.5

Sec. 0.5. As used in this chapter, "unofficial detour route" means the path that the department in conjunction with local officials determines many motorists have taken or are likely to take in place of the official detour route because the path is or was:

- (1) a shorter distance;

- (2) a quicker trip;
- (3) a simpler route to follow; or
- (4) perceived as better by a motorist for any other reason the department recognizes in the department's rules than the official detour route or other means the department has prescribed for a motorist to reach a destination while a state highway, part of a state highway, or state highway bridge is closed to the public as a thoroughfare while under construction or while being repaired by the department.

As added by P.L.120-1995, SEC.2.

IC 8-23-21-1

Sec. 1. Whenever it is necessary for the department to designate and use a county highway as an official detour route, the department shall keep the highway used as an official detour route in a reasonable state of repair at all times while the highway is being used as an official detour route.

As added by P.L.18-1990, SEC.230. Amended by P.L.120-1995, SEC.3.

IC 8-23-21-2

Sec. 2. (a) When a state highway that was temporarily closed is reopened to traffic as a public thoroughfare, the department shall place the official detour route in the condition agreed to in writing by the department and the county before the official detour route was designated by the department.

(b) When a state highway that was temporarily closed is reopened to traffic as a public thoroughfare, the department shall restore the route that has been determined as an unofficial detour route to a condition that:

- (1) is at least as good as the condition the unofficial detour route was in before it was determined by the department to be an unofficial detour route; or
- (2) satisfies specifications of a written agreement between the department and the county in which the unofficial detour route is located.

(c) The department is required to restore only one (1) unofficial detour route for each official detour route under this section.

(d) Except as provided in section 4 of this chapter and if the establishment of run arounds is determined to be the most cost effective alternative of all available alternatives, the department shall establish runarounds instead of detours and may install temporary structures or other facilities to render the runarounds usable by persons traveling over the highway.

As added by P.L.18-1990, SEC.230. Amended by P.L.78-1990, SEC.1; P.L.120-1995, SEC.4.

IC 8-23-21-3

Reserved

IC 8-23-21-4

Sec. 4. The department shall designate a county highway as the official detour route if:

(1) the executive of the county through which the county highway passes adopts a resolution consenting to the official detour route; and

(2) under rules adopted by the department, the department determines that it is not more expensive to designate a county highway as an official detour route than it is to provide other means for a motorist to reach a destination.

As added by P.L.120-1995, SEC.5.

IC 8-23-22-2

Sec. 2. The department shall enter into an agreement for the sharing of the utility costs of illumination with cities, towns, and counties when a highway is located in part within a city, town, or county before the installation of lights, except when the state elects to totally fund the illumination. The cost of the installation of lights may be paid by the state and cities, towns, and counties in accordance with the agreement entered into before installation.

As added by P.L.18-1990, SEC.231.

IC 36-1-7

IC 36-1-7-1

Sec. 1. This chapter applies to the following:

- (1) The state.
- (2) All political subdivisions.
- (3) All state agencies.
- (4) Another state to the extent authorized by the law of that state.
- (5) Political subdivisions of states other than Indiana, to the extent authorized by laws of the other states.
- (6) Agencies of the federal government, to the extent authorized by federal laws.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.5-1993, SEC.336.

IC 36-1-7-2

Sec. 2. (a) A power that may be exercised by an Indiana political subdivision and by one (1) or more other governmental entities may be exercised:

- (1) by one (1) or more entities on behalf of others; or
- (2) jointly by the entities. Entities that want to do this must, by ordinance or resolution, enter into a written agreement under section 3 or 9 of this chapter.

(b) Notwithstanding subsection (a), Indiana governmental entities that want only to buy, sell, or

exchange services, supplies, or equipment between or among themselves may enter into contracts to do this and follow section 12 of this chapter.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-3

Sec. 3. (a) An agreement under this section must provide for the following:

- (1) Its duration.
- (2) Its purpose.
- (3) The manner of financing, staffing, and supplying the joint undertaking and of establishing and maintaining a budget therefor.
- (4) The methods that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination.
- (5) Administration through:
 - (A) a separate legal entity, the nature, organization, composition, and powers of which must be provided; or
 - (B) a joint board composed of representatives of the entities that are parties to the agreement, and on which all parties to the agreement must be represented.
- (6) The manner of acquiring, holding, and disposing of real and personal property used in the joint undertaking, whenever a joint board is created under subdivision (5)(B).

In addition, such an agreement may provide for any other appropriate matters.

(b) A separate legal entity or joint board established by an agreement under this section has only the powers delegated to it by the agreement. The agreement may not provide for members, directors, or trustees of the separate legal entity or joint board to make appointments (either individually or jointly) to fill vacancies on the separate legal entity or joint board.

(c) Subsection (a)(6) does not apply to an emergency management assistance compact under IC 10-4-2.5.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.56-1988, SEC.11; P.L.30-1998, SEC.3.

IC 36-1-7-4

Sec. 4. (a) If an agreement under section 3 of this chapter:

- (1) involves as parties only Indiana political subdivisions;
- (2) is approved by the fiscal body of each party either before or after it is entered into by the executives of the parties; and
- (3) delegates to the treasurer or disbursing officer

of one (1) of the parties the duty to receive, disburse, and account for all monies of the joint undertaking; then the approval of the attorney general is not required.

(b) If subsection (a) does not apply, an agreement under section 3 of this chapter must be submitted to the attorney general for his approval. The attorney general shall approve the agreement unless he finds that it does not comply with the statutes, in which case he shall detail in writing for the executives of the parties the specific respects in which the agreement does not comply. If the attorney general fails to disapprove the agreement within sixty (60) days after it is submitted to him, it is considered approved.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-5

Sec. 5. (a) Except as provided in subsection (b) and regardless of the requirements of section 4 of this chapter, if an agreement under section 3 of this chapter concerns the provision of services or facilities that a state officer or state agency has power to control, the agreement must be submitted to that officer or agency for approval before it takes effect.

(b) If a reciprocal borrowing agreement under section 3 of this chapter concerns the provision of library services or facilities between public libraries that are of the same nature as the services provided under the statewide library card program under IC 4-23-7.1-5.1, the reciprocal borrowing agreement is not required to be submitted to the Indiana library and historical board for approval before the reciprocal borrowing agreement takes effect, but a copy of the reciprocal borrowing agreement shall be submitted to the state library.

(c) Approval or disapproval is governed by the same provisions prescribed by section 4(b) of this chapter for the attorney general.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.37-1993, SEC.4.

IC 36-1-7-6

Sec. 6. Before it takes effect, an agreement under section 3 of this chapter must be recorded with the county recorder. Not later than sixty (60) days after it takes effect, such an agreement must be filed with the state board of accounts for audit purposes.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-7

Sec. 7. (a) Except as provided in subsection (c), if an agreement under section 3 of this chapter concerns the provision of law enforcement or firefighting services, the following provisions apply:

- (1) Visiting law enforcement officers or firefighters have the same powers and duties as corresponding

personnel of the entities they visit, but only for the period they are engaged in activities authorized by the entity they are visiting, and are subject to all provisions of law as if they were providing services within their own jurisdiction.

(2) An entity providing visiting personnel remains responsible for the conduct of its personnel, for their medical expenses, for worker's compensation, and if the entity is a volunteer fire department, for all benefits provided by IC 36-8-12.

(b) A law enforcement or fire service agency of a unit or of the state may request the assistance of a law enforcement or fire service agency of another unit, even if no agreement for such assistance is in effect. In such a case, subsection (a)(1) and (a)(2) apply, the agency requesting assistance shall pay all travel expenses, and all visiting personnel shall be supervised by the agency requesting assistance.

(c) This subsection applies to a law enforcement officer that visits another state after a request for assistance from another state under the emergency management compact is made under IC 10-4-2.5. A law enforcement officer that visits another state does not have the power of arrest unless the law enforcement officer is specifically authorized to exercise the power by the receiving state.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.28-1988, SEC.115; P.L.229-1996, SEC.1; P.L.30-1998, SEC.4; P.L.1-1999, SEC.80.

IC 36-1-7-8

Sec. 8. If any entities of other jurisdictions are parties to an agreement under section 3 of this chapter, the agreement constitutes an interstate compact. However, in a case or controversy involving such an agreement, all parties to the agreement shall be considered real parties in interest; and if the state suffers any damages or incurs any liability as a result of being joined as a party in such a case or controversy, it may bring an action against any entity causing the state to suffer damages or incur liability.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-9

Sec. 9. (a) This section may be used only for an agreement between an Indiana municipality and the executive of the county in which it is located concerning highway construction and maintenance and related matters.

(b) An agreement under this section must provide for the following:

(1) Its duration, which may not be more than four (4) years.

(2) The specific functions and services to be performed or furnished by the county on behalf of the municipality. In addition, such an agreement may provide for any other appropriate matters.

(c) An agreement under this section may provide for either of the following:

(1) A stipulation that distributions from the motor vehicle highway account under IC 8-14-1, the local road and street account under IC 8-14-2, or both, be made to the county rather than to the municipality.

(2) A stipulation that the municipality will appropriate a specified part of those distributions for purposes listed in the agreement.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-10

Sec. 10. Before it takes effect, an agreement under section 9 of this chapter must be:

(1) approved by the fiscal body of each party;

(2) recorded with the county recorder;

(3) filed with the executive of the municipality and the auditor of the county; and

(4) filed with the auditor of state.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-11

Sec. 11. An entity entering into an agreement under this chapter may:

(1) appropriate monies; and

(2) provide personnel, services, and facilities; to carry out the agreement.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-12

Sec. 12. (a) Whenever a contract provides for the purchase, sale, or exchange of services, supplies, or equipment between or among Indiana governmental entities only, no notice by publication or posting is required.

(b) Whenever a contract provides for one (1) Indiana governmental entity to make a purchase for another, compliance by the one with the applicable statutes governing public bids constitutes compliance by the other.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-7-13

Sec. 13. Whenever an agreement authorized by this chapter is between school corporations, teachers employed under the agreement have the same rights and privileges as teachers employed under IC 20-5-11-3.5, IC 20-5-11-3.6, and IC 20-5-11-3.7.

As added by P.L.110-1984, SEC.3.

IC 36-1-7-15

Sec. 15. (a) This section applies only to political subdivisions in the following:

(1) A city having a population of more than one hundred ten thousand (110,000) but less than one hundred twenty thousand (120,000).

(2) A county having a population of more than one hundred thousand (100,000) but less than one hundred seven thousand (107,000).

(3) A county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000).

(b) As used in this section, "economic development entity" means a department of redevelopment organized under IC 36-7-14, a port authority organized under IC 8-10-5, or an airport authority organized under IC 8-22-3.

(c) Notwithstanding section 2 of this chapter, two (2) or more economic development entities may enter into a written agreement under section 3 of this chapter if the agreement is requested by the executive of a city or county described in subsection (a) and if the agreement is approved by each entity's governing body and by the executive of a city or county described in subsection (a).

(d) A party to an agreement under this section may do one (1) or more of the following:

(1) Except as provided in subsection (e), grant one (1) or more of its powers to another party to the agreement.

(2) Exercise any power granted to it by a party to the agreement.

(3) Pledge any of its revenues, including taxes or allocated taxes under IC 36-7-14 or IC 8-22-3.5, to the bonds or lease rental obligations of another party to the agreement under IC 5-1-14-4.

(e) An economic development entity may not grant to another entity the power to tax or to establish an allocation area under IC 8-22-3.5 or IC 36-7-14-39.

(f) An agreement under this section does not have to comply with section 3(a)(5) or section 4 of this chapter.

(g) An action to challenge the validity of an agreement under this section must be brought within thirty (30) days after the agreement has been approved by all the parties to the agreement. After that period has passed, the agreement is not contestable for any cause.

As added by P.L.108-1993, SEC.12. Amended by P.L.115-1995, SEC.14; P.L.85-1996, SEC.10.



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Funding the Local Transportation System

Introduction

Funding local roads and streets is a much more demanding and complex task during times of financial stress and deficit budgets. Funding shortfalls cause an array of complications. Not only is it more difficult to forecast funds accurately and dependably, but agencies are also faced with competing alternatives that require allocation of scarce financial resources. Efficient resource management and effective contingency planning become more critical.

The local public agency budget planning and financial management processes are the tools for establishing financial and asset management plans. The Indiana State Department of Local Government Finance (formerly the State Board of Tax Commissioners) and Indiana LTAP have joined forces in recent years to become key resources for making this happen through their collaboration in the budget workshops. The department is continually participating in the process to help local government agencies with budget development and approval. Executing these plans requires stewardship in a number of areas, including accountability and ensuring that agencies follow the laws and regulations pertaining to purchasing and public contracting.

This chapter addresses the complex topic of funding the local transportation system. It highlights and explains how to plan and manage funds and how to leverage and use funding sources, including federal, local, and special funding sources. It summarizes and references the requirements of the public construction statutes and purchasing rules, and includes the purchasing decision, its management, and the statutory requirements and limits.

Safety funds flow through to the states via the national transportation bill's funding formulas. Controversial requirements such as seat belt and helmet laws can divert funds from state and local construction projects. Safety funding has now worked its way up the ladder of transportation funding priorities. The SAFETEA acronym given to the 2003 transportation bill proposed by the administration speaks to the serious concern about highway safety funding. (File photo)

State Funding and Highway Finance

The legislative history of highway funding in Indiana has its roots in early territorial days and continues through the nineteenth century to the early years of the twentieth century. A variety of schemes, such as toll roads, road taxes, and maintaining gravel pits and road districts were used until the 1916 Federal Aid Highway Act mandated a more systematic approach to highway planning and finance. Article 14, Title 8, Highway Finances, contains the current highway financing laws.

The Funding Challenge

As a general statement, Indiana's local transportation agencies annually spend \$600 million to maintain more than 81,000 miles of roads and more than 12,000 bridges. While resources are shrinking, the tasks facing local highway, road and street departments are expanding in number and complexity. Both costs and the time required to stay up to date increase as quickly as the tasks. (Indiana Local Technical Assistance Program 2001)

The Needs Assessment for Local Roads and Streets published by Indiana Local Technical Assistance Program (IN-LTAP) in the summer of 2001 brought the local road and street funding shortfall into sharp focus. Historically, there has never been enough funding to meet the needs of Indiana's local road and street network. The assessment advised the General Assembly and the public of an estimated \$2.5 million shortfall in short-term, immediate, and long-term local road and street needs. The 2001 Legislature was unable to renew an existing special funding package for local roads and streets. That forced local public agencies (LPAs) to shuffle existing funding resources based upon priority and need and to look for new funding sources. This brought attention to the limited use of the General Assembly's local option highway users tax mechanism. These local option taxes can generate additional funding for local roads and streets and most certainly will receive increased visibility and use. The General Assembly has signaled local governments to take advantage of these options before any additional funds will be made available from the State. Locals are now faced with the prospect of selling these option taxes to their publics during a trying time, which is a challenge.

Scarce resources and increasing demands provide the incentive to develop new sources. The long-term total costs to the users of local roads and bridges will increase regardless, but more

effective use of assets and of the additional funds approach will maintain and enhance local transportation resources. The sources and uses of funds form the thread for this discussion.

The Federal Aid Highway Program

Until the early twentieth century, funding support for local highways had been under the purview of local governments. The first territorial and state legislature busied itself with establishing and laying roads in Indiana, even as the federal government worked through the contentious, but necessary, internal improvements program. By the late nineteenth century, Indiana's roads were still mostly tracks and traces through the rural landscape. A network was developing, but the roads themselves were muddy ways, with some plank and drove roads sometimes choked with livestock. The late nineteenth- and twentieth-century agitation for better roads and improved management and engineering at all levels resulted in passage of the Federal Aid Highway Act in 1916. Now Indiana had statewide planning and organization, not to mention some federal dollars targeted at the problem. This federal-state relationship was made permanent in the 1921 Federal Aid Highway Act, and this relationship remains intact today (FHWA, 1984).

Over the years, evolving legislation has revised and strengthened the Federal Aid Highway program. Since 1978, Congress has passed a larger multiyear transportation program. The current act (2003) is the Transportation Equity Act for the 21st Century, which funds transportation for state and local projects, including the National Highway System (NHS), bridge projects on any public road, transit capital projects, and intercity and intracity bus terminals and facilities. A portion of the funds reserved for rural areas may be spent on rural minor collectors. Funds are also set aside for rail-highway crossing hazard elimination and Operation Lifesaver. Funds are apportioned according to a formula based on the lane miles, total vehicle miles traveled, and estimated tax paid by users into the Highway Trust Fund.

Detailed information is available on the FHWA and U.S. Department of Transportation web sites, and from INDOT. (See Financing Federal-Aid Highways Fact Sheet, FHWA) 1999, and TEA-21 Fact Sheet; also FHWA 1998 and the Fact Sheet Index on the FHWA website. <http://www.fhwa.dot.gov/reports/fifahiwy/fifahi01.htm>.)

INDOT Federal Aid Program

The Indiana Department of Transportation (INDOT) is responsible for administering the federal aid program in Indiana. The details are spelled out in the INDOT Program Development Process, *A Summary of the INDOT Federal Aid Program to Local Agencies 2001*. The program manual is indispensable to local public agencies in the planning process. Contact INDOT for the latest version of the document since it changes some each year.

Federal Aid-sharing Arrangement

INDOT's annual development of the federal aid-sharing arrangement is a collaborative process in which the federal aid funding allocations to local public agencies are made based on guidance from FHWA with input from local agencies and MPOs. In December of each year, if all the information flows as it should, INDOT holds a federal aid-sharing meeting at which funding for the current year and the rules are discussed. Local public agencies, including MPOs and rural planning organizations and associations, are invited to comment before the rules become final for the fiscal year. Once this allocation is decided, INDOT then mails to agencies the guidance and the distributions by funding category, and posts the same information on the INDOT web site. This discussion focuses on the federal aid-sharing aspects applicable to LPAs.

Use the complete document as reference, and direct any questions to the INDOT local transportation section. A summary of the federal aid-sharing arrangement confirms INDOT's commitment to the need for planning by all local entities—and the need for rural areas to engage in this process—to move federal aid-eligible projects along and to ensure that local entities receive the maximum federal aid funding.

The rules for 2002 federal aid funds (based on 2001) are:

1. Metropolitan planning organizations (MPOs) are the only entities authorized to submit preliminary engineering (PE) and right-of-way projects as long as they are "reasonable" and "fundable." These projects will not be approved for entities other than MPOs. Those in the pipeline before October 1, 1996, will be supplemented only up to 10 percent with 100 percent local funds. Transportation enhancement projects are excepted. These funds can be used for PE and R/W for enhancement projects. If not used, the eligible cost the locals incur may be applied as a credit to the local match on construction.
2. Dedicated and capped fund overruns must be funded with 100 percent local funds, and none capped, shared funds with overruns in excess of 10 percent must be funded with 100 percent local funds or resubmitted for funding at a new, higher cost.
3. Dedicated local funds are to be given a proportional share of obligation authority. MPOs continue to be bound by the 1999 flexible funding policy through the new fiscal year.

In subsequent paragraphs of the federal aid-sharing arrangement, INDOT relates the following: INDOT receives 100 percent of the interstate maintenance funds and NHS funds. Other apportionments include 35 percent of the bridge funds reserved for LPAs, with 15 percent mandated to be spent on routes classified as rural minor collectors. No more than four bridges may be in a preservation program at any one time, with the exception of bridges on road projects. Bridge funds are available on a first-come, first-served basis, and no PE/R/W federal aid funding is available for bridge projects. The letter also provides for distribution and management of surface

transportation funds, minimum guarantee funds that are allocated in accordance with TEA-21 provisions. Again, consult the website or contact the local transportation section. Finally, the federal aid-sharing arrangement letter specifies that all rail projects are eligible for 100 percent federal funding.

The INDOT Federal Aid Program Development Process

The Indiana Department of Transportation (INDOT) manages the federal aid funding process, working closely with local agencies in programming and managing federal aid funds allocated to local projects. The basis for this process is the federal aid highway program and available funding from year to year under the present law (the Transportation Equity Act for the 21st Century). INDOT publishes a Program Development Process Guide for local agencies. The discussion below is a summary of the guide and is based upon the 2001 version, which has been updated as much as possible prior to this manual's distribution. Representatives of local public agencies should check with INDOT for subsequent information. Those who use the Internet can do this by accessing the Indiana Department of Transportation web site at www.in.gov/dot/

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The Federal and State Roles

States receive an annual allocation of federal funds from the Federal Highway Administration. Five of the funds categories are the Surface Transportation Program (STP), Hazard Elimination/Safety (HES), Transportation Enhancement (TE), Minimum Guarantee (MG), and Bridge Program (BR). INDOT shares a portion of these funds with LPAs. The split is 75 percent for INDOT state projects and 25 percent for local governments, including MPOs.

From the LPAs' 25 percent, a portion is reserved by federal law for urbanized areas—cities with populations at or above 50,000. The remainder is for counties and smaller cities and towns. The guide in these matters is the INDOT/local federal aid-sharing arrangement discussed earlier.

Local Government Groupings

For this program, local government units are grouped into one of four categories based on the latest United States census.

- Group I (urbanized) Cities: Population at or greater than 200,000.
- Group II (urbanized) Cities: Population at or greater than 50,000 but less than 200,000.
- Group III (urban) Cities and towns: Population over 5,000 and fewer than 50,000.
- Group IV (rural) Towns: Populations under 5,000.
- Group IV (rural) County: Any county regardless of population.

Group I and II areas each receive a budget of STP funds through their MPOs. MPOs select projects for federal aid through their own established processes. INDOT does not select or approve these projects. (See Chapter 5, Transportation Planning.)

Groups III and IV also have an annual budget, but it is not allocated to any particular unit of local government. Counties, cities, and towns in these groups apply to INDOT for funding on a project-by-project basis if, and only if, INDOT is accepting applications. Within an established application and review process for these areas, INDOT reviews and approves the projects for federal aid and is most closely interested in the federal aid program for Group III and IV LPAs. The exception is the TE program for all groups.

Keep in mind that the Federal Aid program is a reimbursable program in which agencies receive reimbursements for only eligible expenses. The funds are not provided as an outright grant to the agency. The reimbursement share is a maximum of 80 percent, and the remaining 20 percent is a local match covered with nonfederal funds. An exception is HES funds for which the split is 90/10, federal/local.

FIGURE 4-1 General Contents, INDOT Program Development Guide (Based on 2001 Version)

Except for transportation enhancement (TE), all funds are available for only the construction and construction engineering phases of work. Federal aid will not be approved for preliminary engineering (PE) or right-of-way acquisition (ROW). Agencies must find funds from other federal, state, or local sources to pay for these phases.

Availability of funds for programming new projects is the budget less the cost of projects already in the program. Cost increases to existing approved projects also limit the amount of funding available to new applications.

Limitations. MPOs affect funding and management. Two boundaries must be considered—the inner or urbanized area boundary (UAB) and the outer or metropolitan planning area boundary (MPA). Anything outside the MPA is considered rural or nonurbanized. The location of a project in relation to these boundaries will affect what funds are available and whether or not the project must be listed in the respective MPO's annual transportation improvement program (TIP). See Table 4. Although STP funds can be used for bridge projects, INDOT prefers to reserve STP funds for roadway projects. This is especially appropriate because bridge funds cannot be used for road projects.

Figure 4-2 **INDOT FA PROGRAM DEVELOPMENT**
Tables 1 through 4.

Source: Programming Section, Division of Program Development, Indiana Department of Transportation.

Budget-All Project Types

The estimated annual amount (federal fiscal year 2001 figures) of federal aid that may be available for projects sponsored by local units of government is shown in table one.

Table 1 (figures shown in millions of dollars)

GROUP	MG	STP	HES	TE	BRIDGE
I	10.1	38.8			
II	2.6	18.9			
III	2.6	19.8			
IV	4.0	14.9			19.4
All			7.5	18.0	

Table 2

SUFFICIENCY RATING	WORK ELIGIBLE WITH FHWA BRIDGE FUNDS	PHASE ELIGIBLE
> 80*	None	None
< 80 but > 50	Rehabilitation Only	Construction Only
< 50	Replacement or Rehabilitation	Construction Only

*Although bridge funds can not be used, STP funds may if the bridge work is a necessary part of a road project.

Table 3

RURAL AREA FEDERAL AID SYSTEM	
Principal Arterial	Federal aid OK for road or bridge projects
Minor Arterial	Federal aid OK for road or bridge projects
Major Collector	Federal aid OK for road or bridge projects
Minor Collector	Federal aid OK for road or bridge projects
Local Road	Federal aid OK <i>for bridge projects only</i>
URBAN AREA FEDERAL AID SYSTEM	
Freeway and Expressway	Federal aid OK for road or bridge projects
Other Principal Arterial	Federal aid OK for road or bridge projects
Minor Arterial	Federal aid OK for road or bridge projects
Collector Street	Federal aid OK for road or bridge projects
Local Street	Federal aid OK <i>for bridge projects only</i>

Table 4

PROJECT LOCATION	FUND SOURCE POSSIBLE	MPO TIP LIST
Inside the UAB of MPO	Metropolitan Planning Organization Only	Yes
Outside UAB/Inside MPA	Metropolitan Planning Organization and/or INDOT	Yes
Outside MPA	INDOT Only	No

Hazard Elimination/Safety Projects. To qualify for HES funds the project must be safety-related and demonstrate that it will reduce the number and severity of crashes. The project is identified through some type of engineering survey that proves the location is hazardous. A cost-benefit analysis is needed to evaluate expected crash reductions if the safety improvement is accomplished. Finally, the sponsor must commit to providing a report that will evaluate the improvement and assess the results. Examples of such projects are installing signals and correcting sight distance problems.

Roadway Projects. STP funds can be used for the construction phase of a wide variety of traditional project types, such as new roads, road reconstruction, sight-distance corrections, intersection improvements, railroad crossing work, added travel lanes, and more. However, they cannot be used for maintenance, resurfacing, storm sewer work not incidental to a road project, and replacing signs. Unlike bridges, federal aid for road projects cannot be approved unless the route is on the federal aid system as a federal aid route. For new roads, the proposed route must be eligible to be on the system when completed. Table 3 lists the different functional classifications and whether or not they are eligible for federal aid to road and/or bridge projects.

Bridges

The “Four-Bridge” Limit.

Current policy states that a county cannot have more than four bridges approved for bridge (BR) funds and not let for construction at one time under this program. This policy was developed in cooperation with local government associations. Bridge projects funded by other sources do not count toward this limit.

Bridge Approaches.

FHWA has restricted the amount of approach work that can be funded with bridge funds. In general, the maximum is 200 feet on either side of the bridge’s deck.

Annual Funding Limit.

Group III and Group IV communities may receive no more than \$2.5 million in STP and/or MG funds per year. This is per LPA, not per project.

Cost Increases.

Any cost increase to a project using bridge funds will be covered only up to 10% above the original approved amount. Beyond that, costs must be covered with local funds, or the project must be resubmitted for approval at the higher cost. For projects using STP funds, cost increases will be covered up to the \$2.5 million cap for Group III and Group IV STP-funded projects.

Local Transportation Enhancement (TE) Projects —Any Locality.

Technically, these funds are STP funds reserved for non-traditional transportation improvement projects. The TE program adds funding for planning requirements aimed at promoting a transportation system of diverse modes and improving the quality of life. All rules concerning other local federal aid projects apply to TE program funds with the following modifications.

- The funds are to be used for non-traditional transportation-related projects such as trails, restoration of historic transportation structures, street beautification, museums, etc.
- The PE and ROW phases of work can be funded under this program. Not-for-profit groups can apply if sponsored by a unit of government. Projects do not need to be on the federal aid system. The deadlines for Transportation Enhancement Applications are different. INDOT annually publishes a Transportation Enhancement Program Guide which contains the details and deadlines for the program and a call for projects. This guide is published in early autumn of each year.

Enhancement Projects Defined

To be eligible for Transportation Enhancement (STP) funds, projects must fit within at least one of the 12 types of projects.

- Pedestrian and bicycle facilities
- Pedestrian and bicycle safety and education materials
- Acquisition of scenic or historic easements and sites
- Scenic or historic highway programs, including tourist and welcome centers
- Landscaping and scenic beautification
- Historic preservation

- Rehabilitating and operating historic transportation buildings, structures or facilities
- Converting railway corridors to trails
- Control and removal of outdoor advertising
- Archaeological planning and research
- Mitigating highway runoff pollution and providing wildlife under-crossings
- Establishing transportation museums

Enhancement funds may not be used for what might be considered as maintenance or routine highway improvements. TE projects must be a special or additional activity not normally required on a highway or transportation project. The program requires creativity and innovation in planning, design and partnership development.

Application and Review Process for All Project Types

A letter announcing the call and stating which LPA group and/or project type is being accepted for consideration is sent to every LPA in Indiana. Attached to the letter is an order form the LPA can use to request application form(s) or a software program to apply electronically. The order form is sent to INDOT who returns the requested materials with the date by which the completed application must be submitted. The applications are logged and the review process begins. During this process the LPAs and the projects are checked for eligibility and reviewed. The review process includes consultation with the local assistance coordinators at INDOT's district offices and with experts at the central office in Indianapolis via several program management groups (PMGs). During this time, any applicant may schedule a meeting with the programming section to discuss their proposed project. Once the reviews are completed, the LPAs are notified of the results. Approved projects are given a designation (des) number and INDOT's programming section programs them into INDOT's schedule of projects. From this point, the engineers and staff in INDOT's local transportation section work with the LPA to develop the project.

Post-Approval Development Process for All Project Types

Project sponsors should contact the local transportation section as soon as possible after approval notification. Projects in the system are monitored for progress and changes in scope or cost. Disposition of future applications will depend, in part, on the LPA's project performance.

Local Public Agency Budgeting

Preparing the annual budget is one of the necessary evils of managing an efficient and well-organized highway or street department. For local highway and street departments in Indiana, separate budgets must be prepared for each of the funds under their control. All counties and municipalities will have a motor vehicle highway fund and a local road and street fund. Most will also have a cumulative bridge fund. This section considers budget responsibilities, terminology, significant dates, and an overview of a budget process that will produce a budget that can be funded, usually without significant revision, by the state agency required to review and certify it.

Budget Responsibilities

Responsibility for preparation, review and approval of the highway and/or street department budget is shared by several offices and departments within the local public agency (LPA) and requires close communication and cooperation among these offices.

Counties. The process will begin with the department head, usually the highway engineer or supervisor, and will involve the county auditor, treasurer, commissioners and council. Indiana Code (IC) requires that the department head "shall file with the county auditor a statement that shows in detail the positions for which compensation will be requested in the annual budget for the next year and the amount or rate of compensation proposed." (IC 36-2-5-4) This is commonly referred to as the salary ordinance. Indiana Code (IC) further requires that the department head "prepare an itemized estimate of the amount of money required for his office for the next calendar year," in other words, a budget. (IC 36-2-5-5)

It is important for the budget process to begin at this level to reflect department needs accurately for the forthcoming calendar year. The department head shall file both the budget and the salary ordinance with the auditor prior to the date required by law. The auditor's responsibility is to compile the budgets from each of the various departments into a single consolidated budget for the county and to see that it is properly advertised. The auditor must also present the salary ordinance to the county commissioners for their review. The role of the county commissioners in the review and approval of the highway budget is not as clearly defined in the Indiana Code. However, because the department heads work "at the will of the commissioners," and because they will be required to sign claims against the budget every month, it makes sense for the department heads to work very closely with the commissioners before presenting the budget to the council. Ultimately, it is the responsibility of the council to pass the budget. Clearly, the department head who originally prepared the salary ordinance and the budget should follow his or her request through the process to explain and defend it. Depending on the level of expertise at the highway department, the auditor and/or treasurer may be asked to provide information such as current cash or investment balances to the department head.

Cities and Towns. The process is much the same for municipalities, except the department head will usually be either the city engineer or the street commissioner, or they may both be the head of their own department. The other responsibilities will be born by the clerk-treasurer, mayor and city council. In some cases the board of public works may be involved. Although municipalities are not formally required to prepare a wage and salary statement, it is such a necessary part of the annual budget that something similar should be created.

The State Department of Local Government Finance (DLGF), formerly known as the State Board of Tax Commissioners, must finally review and certify the budget as passed by the county or city council.

Terminology

Before proceeding any further with the budget process, it is important to discuss some commonly used terms to be sure they are always being used and understood correctly. It is also important to recognize the difference between how much cash you have versus how much budget authority you have. The relationship between cash and budget confuses some people, but it is critical to understanding the budget process. Remember that the budget represents the agreement between the department head and the council about what will be spent during the year for each line item. It relies on cash and investments on hand at the time the budget was prepared, as well as on an estimate of what will be received during the budget year. Also, since the budget is prepared at the middle of the year preceding the budget year, it must take into account funds received and spent during the last half of the current year. At any time, there may be more or less cash available than is required by the budget; it simply becomes a matter of cash flow and the agency's desired operating balance. This concept should become clear as certain terms are defined below:

- **Cash Balance.** This is the amount of readily available cash at any point in time. Consider it as the maximum the department head has available for expenditures, since one obviously cannot spend money that one doesn't have. There is only one cash balance for each fund for which a budget has been prepared. All appropriations, or line items, included in the budget will be drawn from this same cash balance.
- **Investment Balance.** Frequently when the cash balance gets too high, a portion may be invested in higher interest accounts such as certificates of deposit. These funds are then obligated for a certain period of time and are not available for expenditures. When estimating total cash on hand, it is important to consider both cash and short-term investments.
- **Appropriation.** This is simply a line item in the budget. For funds to be available to the department head, the council must first approve, or appropriate, those funds. Appropriations are broken down into several classes as illustrated below:

Appropriation number 005 - 02 - 02 - 67 Bituminous Materials	
Fund Number, usually a three-digit number assigned by the agency, such as:	
005	General Highway
011	Local Road and Street
012	Cumulative Bridge
nnn	Etc.
Department Number, according to the following standard set by the DLGF:	
01	Administrative
02	Maintenance and Repairs
03	Construction and Reconstruction
04	General and Undistributed
Major Budget Class, according to the following standard set by the DLGF:	
01	Personal Services
02	Supplies
03	Other Services and Charges
04	Capital Outlays
Minor Budget Class, usually a two digit number assigned by the agency, such as:	
67	Bituminous Materials

Figure 4-3. Example of Appropriation Number Breakdown

- **Appropriation Balance.** This is the amount remaining in the budget for any single or group of appropriations. Consider the appropriation balance as the maximum authority the department head has for expenditures in that appropriation group. There is an appropriation balance for each appropriation item in the budget, and the total of all these is the appropriation balance for the fund.
- **Operating Balance.** The operating balance may be the most misused term. Correctly used, it represents the amount of funds that will be left at the end of the budget year if all projected revenue is received exactly as predicted and every appropriation of the budget is completely expended. It is that amount of money that has been kept in reserve and not included in the budget. Funds in the operating balance may not be spent until they have first been appropriated into the budget.

Overview of the Budget Process

Often the budget process consists simply of revising the current year budget based on present conditions and past experience. Many times no further involvement is required or requested of the department head for whom the budget is being prepared. This often leads to a budget that either cannot be funded, or one that leaves a significant amount of money out of the budget

that could be included and put to use by the department. A better approach is for the department head to understand the process completely so he or she can request a budget that can be funded and be knowledgeable about the amount of money held in the operating balance. The educated process consists of four basic steps.

- **Step 1** Estimate salaries and wages. For many departments, especially smaller ones, salaries and wages can consume as much as 50% of the department budget. Also, since some salary increase is requested nearly every year, the overall impact of this increase must be known and considered, especially when revenues are steady or decreasing. Total salaries and wages should include an estimate of overtime for wage earners. Local worksheets or Worksheet 1 available from LTAP provides a convenient format for calculating the wage and salary appropriations for a typical county highway department. Similar calculations could be made for a city street department, although they are not required by the DLGF. The results of this worksheet should be reported to the auditor on State Form 144 for county departments. A separate Form 144 is required for each department.
- **Step 2** Prepare a DRAFT budget request. A common school of thought is that the DRAFT budget request should reflect the department's true needs, regardless of how unrealistic they may be. This may sound like an exercise in futility, but it actually protects the department head in several ways. First, the fiscal body is made aware of the true needs, rather than just how the department plans to allocate the expected level of funding. Many department heads have heard their council say to them, "We have always given you what you asked for. Why are there still bad roads and streets?" This may have happened when the department head asked only for what could be approved, rather than what was actually needed. Two areas where the need is often underestimated are capital expenses for equipment, and road or street maintenance expenses. LTAP Worksheet 2 can be used to calculate the funding needed for equipment capital expenses based on straight-line depreciation of all equipment owned by the department. Future additions to the equipment fleet should also be included in the calculation to yield the appropriate annual funding level. LTAP Worksheet 3 can be used to calculate estimated funding levels required to maintain adequately, a given mileage of paved roads or streets. LTAP Worksheet 4 provides a list of what items should be included in each of the four major budget categories. The second good reason to request a higher amount is that it is the amount that will be advertised, and it can always be reduced but not increased. What becomes very important when using this approach is to follow through with Step 3 and calculate what can be funded, then attend the first budget meeting with reductions in mind to meet the fundable budget level. If these cuts are not made at this time, they may be passed through to the DLGF which will make the cuts themselves. This action

by the DLGF is what produces the often-heard comment, "The state cut my budget and I don't know why." Most, if not all, of the time this is done because the budget submitted could not be funded with the existing cash and appropriation balances and expected revenues.

- **Step 3** Estimate funding available. Many departments consider their budget work completed at the conclusion of step 2. However, it is strongly recommended that the department head estimate the maximum budget amount to ensure he submits a budget that can be funded. This done by estimating the total cash and investment balances as of June 30 of the current year, adding the estimated revenues for the last half of the current year and all of the budget year, and then subtracting the estimated expenditures for the last half of the current year. The result is the maximum amount that will be approved by the state for the coming budget year. Most agencies will not budget the maximum amount available, but rather leave something as an operating balance. Budgeting the maximum is not forbidden by the State, but it removes any flexibility for unexpected expenses. A good rule of thumb is to leave an operating balance of 10 to 15 percent of the annual revenue. In estimating expenses for the last half of the current year, it is normally assumed that the total appropriation balance will be spent, including any additional appropriations that may be requested during the remainder of the year. This provides a conservative estimate. For estimating revenue into the fund, factors provided by the state auditor's office are applied to the most recent corresponding six-month period (i.e., factor the last half of last year to estimate the last half of the current and budget years, factor the first half of the current year to estimate the first half of the budget year). It is up to the local agency to estimate revenue from local sources such as the local option highway user tax and any other local taxes dedicated to the highway department.
- **Step 4** Reconcile the shortage or surplus. This is usually done at the first budget meeting with the fiscal body. As mentioned earlier, it is best to submit and advertise a budget higher than can be funded, then suggest reductions to reach a budget level that will leave an adequate operating balance. Quite often the fiscal body will approve a wage and salary increase less than that requested. If this is the case, it is worthwhile to recalculate the appropriations required for salaries and wages to use the savings somewhere else in the budget.

Preparing Forms and Worksheets

All the calculations required during the budget process can be made either on a state-prescribed form or on a worksheet developed by the Indiana LTAP Center. Using these forms and worksheets is not required but is recommended because it produces a very logical "cookbook" approach that can be

reviewed easily by others. The following state forms and worksheets are available:

State Forms

State Form 144	Statement of Salaries and Wages (Counties only)
State Form 1	Budget Estimate
State Form 2	Estimate of Miscellaneous Revenues
State Form 4a	Budget Classification Report
State Form 4b	Financial Statement (16 line statement)

LTAP Worksheets

LTAP Worksheet 1	Wage and Salary Calculations
LTAP Worksheet 2	Budget Calculations
LTAP Worksheet 3	Revenue Estimate
LTAP Worksheet 4	Appropriation Balance

Sample calculations using all of these forms are available from the Indiana LTAP Center.

Significant Dates

The timeline for budget preparation, review and approval is set by Indiana Code (**IC 36-2-5**). Generally, budget preparation begins in mid-June, after the first six months of the current year's distributions have been received. Soon after, the state auditor's office will release factors for estimating receipts for the remainder of the current year and the first and second halves of the budget year. For counties, the wage and salary information is required by the auditor before July 2. It has become common practice to prepare the budget in conjunction with the salary ordinance and submit it all at the same time. The budget must be advertised twice in the local newspaper, followed by two public meetings of the fiscal body. The second public meeting, where final action is taken, must occur before September 20. After final action by the fiscal body, the budget is sent to the DLGF for their review and approval. If significant action is required by the DLGF, the process may continue for several months after that.

Managing the Approved Budget

Indiana Code requires both municipalities and counties to maintain a complete set of books and records. It is strongly recommended that this set of records be kept by the highway and/or street department. If the official records are kept elsewhere, a duplicate set of books should be maintained at the highway or street department. The department head should be able to see a report showing the current balance for each of the appropriations within his budget. Sound financial decisions can only be made with accurate, up-to-date information. Even with

such information and careful planning, unforeseen events will require budget modifications during the year. There are procedures in place to accomplish most necessary changes, provided funds are available and proper authority is given. Modifications to the budget can be made using the following procedures.

- **Shift** A shift is the unofficial term for the transfer of funds between appropriations within the same major budget category. According to the DLGF, approval for this type of action is not required by the elected fiscal body or the State. However, communication with the fiscal body is highly recommended.
- **Transfer** This is the official term for moving funds from an appropriation in one major budget category to an appropriation in a different major category. Transfers may be made among the major budget categories but are not allowed to be made between departments. Approval for such an action is required from the fiscal body, but not from the DLGF.
- **Additional (appropriation)** An additional is simply an increase to a particular appropriation. Funds must be available in the operating balance to permit such an increase, and the operating balance will be reduced by the amount of the additional. Additional must be approved by the fiscal body and the DLGF.
- **Reduction** A reduction is simply the opposite of an additional. Seldom used, a reduction lessens the appropriation by the desired amount and increases the operating balance. Most often it is then re-appropriated into another department, essentially acting as a transfer between departments.
- **Encumbrance** The encumbrance provides a mechanism for carrying money over from one budget year to the next. To encumber money into a new budget year, a contract or purchase order must have been signed during the earlier year.

Budget Preparation Resources

There are several resources available to assist with preparing highway and street department budgets. The DLGF offers training programs to municipalities and assists with training programs offered by the Indiana LTAP Center. The DLGF also has field representatives working in each of the county courthouses on certain days who may be able to offer assistance and answer questions. The settlement deputy of the state auditor's office will provide factors for estimating receipts from several of the major statewide funds, such as the motor vehicle highway fund and the local road and street fund. The Association of Indiana Counties (AIC) also has training workshops for overall county budget preparation.

Figure 4-4. Definitions of Major Budget Categories

Definitions of Major Budget Categories

Personal Services Salaries and Wages Employee Benefits Contributions to retirement systems Unemployment compensation Group health and life insurance Other Clothing allowance Self-funded insurance plans	Supplies Office Supplies State-approved forms Paper Letterheads Envelopes Computer supplies Operating Supplies Fuel Ice Garage and motor supplies Medical supplies Repair and Maintenance Supplies Bituminous materials Stone and gravel Building supplies Repair parts Small tools Minor equipment Other	Other Services and Charges Professional Services Legal Engineering Architectural Communication and Transportation Postage Travel expenses Telephone Printing and Advertising Public notices Photography and blueprints Insurance All except employ. benefits Utility Services Light Power Heat Water Sewage Repairs and Maintenance Contract repairs to equipment Contract repairs to buildings Rentals Land Buildings Equipment Hydrants Debt Services GO indebtedness Other	Capital Outlays Land Buildings Other Improvements Fences Retaining Walls Sidewalks Pavements Machinery and Equipment Machinery Tools Cars Trucks Heavy Equipment Other
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Procurement and Purchasing

Procurement is a process with longer-term planning steps that involve identifying requirements, determining specifications, detailed planning and a time line that may include more completed financial planning. Significant expenditures for equipment or machinery takes on life cycle characteristics, making the procurement process complicated and expensive. One example is the feasibility studies and preliminary planning steps which often involve consultants who provide professional services. As the process moves along, different contract instruments may be employed, and administration of a procurement contract can be a larger expenditure.

Purchasing, on the other hand, is best described as an act rather than a process. Yet it can also be a step in the procurement process. Purchasing methods are often used for expendable

materials, supplies and specific commodities, depending upon need. Equipment leases or purchases can be included in this definition.

Procurement and Construction

Procurement and construction by local and state agencies is provided for in a number of Indiana Code sections. The underpinning statute for public purchasing is **IC 5-22**, Public Purchasing, which, with exceptions spelled out in the statute, applies to every expenditure of public funds by a government body. (IACC Handbook, 2000) With a few significant exceptions, procurement and construction at the state level is carried out by the agency that is going to use the product of that effort, and the project is monitored by the State Department of Administration. (**IC 4-13-2-5**) The statutes also provide for state and local entities to undertake construction. The area of transportation

is affected the most, and a list of the agencies and Indiana Code sections pertaining to transportation entities and agencies follows:

- Indiana Port Commission. **IC 8-10-1-1**
- Indiana Department of Transportation. **IC 8-17-1-1** (counties), **8-22-2-5** (aviation), **8-23-2-6** (state level), **8-23-5-7** (roadside parks)
- Public Works Projects. **IC 36-1-12**. Applies to all units, but with exceptions and dollar limits for levels of detail in the bidding processes.
- More specific general powers. **IC 36-9-2**. Transportation and Public Works. The statute outlines general powers.
- Local Works Board. **IC 36-9-6-7, 36-9-6-10, 36-9-6-11, 12, and 16**.
- County Drainage Board. **IC 36-9-27** et seq.

Other Highlights

Almost every project undertaken by a LPA must be designed or at least approved by a professional architect or engineer. (**IC 5-31-1-10, 4-13.6-5-1, 36-1-12-7**)

Design services are most often procured through negotiation. More and more of these negotiations are being undertaken in Indiana using qualifications-based selection, a negotiated procurement process for selection based on qualifications and competence in the work to be performed. (QBS Guide, www.ai.org/cei/qbs)

Contracts can take a number of forms. At the local level, the fundamental communication tool between buyers and sellers of goods and services is the contract. Because of the diversity of procurement and purchasing activity, contracts can be crafted to include characteristics to deal with each individual situation. Generally, contracts are classified according to the pricing provisions--fixed price or cost reimbursement. One form of reimbursement contract, the cost plus a fixed fee contract, has been found unacceptable because of potential abuse. A variation, the cost plus a percentage of cost contract, is illegal for government bodies in Indiana. (**IC 5-5-22-17-1**)

Qualifications-Based Selection of Engineering Consultant Services

According to the Indiana QBS Users Guide, QBS is "a negotiated procurement process for selection based on qualifications and competence in relation to the work to be performed." The Indiana-based QBS Coalition, organized in 1990 with the financial support of the American Consulting Engineers Council, the National Society of Professional Engineers, and the American Institute of Architects, promotes qualifications-based selection (QBS) as the preferred system for selection of professional services. Indiana law allows public agencies to choose professionals based upon qualifications, while federal law requires this practice of federal or state and local agencies using federal funds. Sole-source procurement of services is

allowed in some cases, and if projects are within the broad threshold of \$100,000. (Indiana QBS Users Guide)

Rooted in the Brooks Act (41 USC 253 and 259, and 23 CFR Part 172), the QBS process is further discussed in the FHWA 1996 Memorandum, Consultant Contracts, Services, Small Purchases Threshold. The nature of the requirement is this: Consultant contracts for engineering and design-related services financed with federal dollars must result from negotiations which utilize QBS. The QBS procedures do not allow price to be used as a factor in the selection process. (FHWA)

In a nutshell, QBS promotes improved project quality by assuring that both the client and the professional clearly understand the scope of the work required. QBS is more efficient and less costly than selection using price as the primary criterion. The QBS process results in a more clearly defined scope of work that can lead to more cost-effective, and in some cases innovative, project development and construction.

Steps in the QBS Process (QBS Users Guide).

Note that some states and local agencies may have specific requirements that may vary from the process outlined.

The QBS Process

- Fosters broad-based competition.
- Provides the selected professional the opportunity to completely understand the owner's needs and objectives based on a negotiated fee.
- Practiced for over 100 years and embodied in the Brook's Act—Public Law 92-582, reaffirmed by Public Law 100-464.
- Saves money over bid based methods as proven in actual practice by public and private owners.
- Takes full advantage of the creativity and expertise of your professional.

QBS Withstands all Scrutiny

Figure 4-5. The QBS Process (Indiana QBS Coalition)

About Money

Beginning with the Indiana Constitution of 1851, aversion to debt financing is ingrained in Hoosiers. Nonetheless, some leveraged financing techniques are available, and local officials should be familiar with these techniques and be able to evaluate whether some can be used to generate or free funding for local roads and streets.

Funding Strategies— A Look Back and Ahead

A 1984 publication by the American Public Works Association, *Paying for Transportation at the Local Level, 17 Strategies*, is out of print but many of the ideas it expressed are still good, stimulate

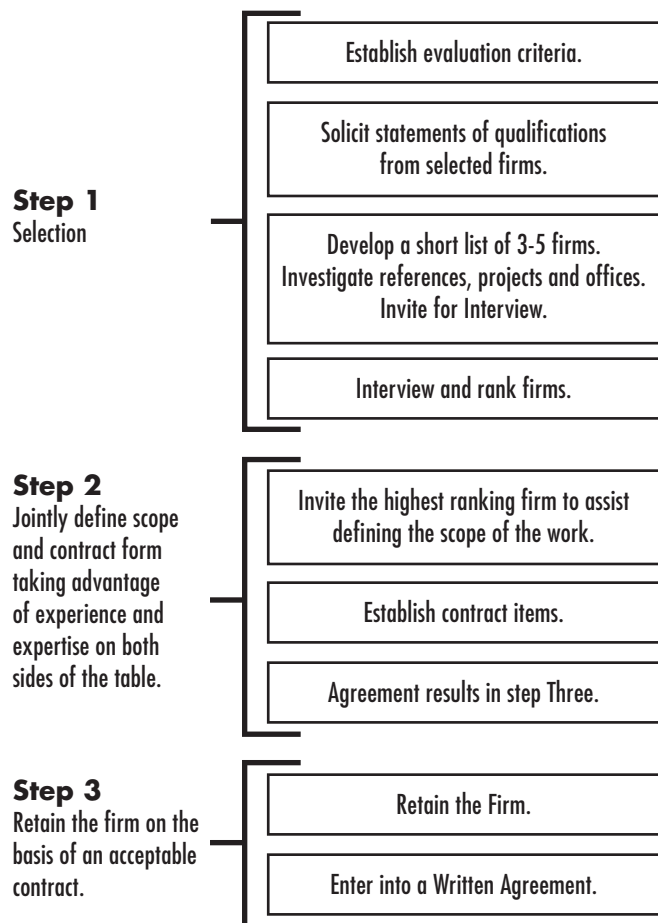


Figure 4-6. QBS Selection Process Flow Chart (Indiana QBS Coalition)

further thinking, and were used in the 1988 Road and Street Manual. In 1984 there was widespread concern about the deteriorating transportation infrastructure and the need to “get it right” in setting priorities and meeting the challenge. This issue again rings loudly today.

The 1990s saw a new energy and additional funding for transportation infrastructure which could end with the TEA-21 authorization. In fact, FY 2003 authorization plans indicate a downturn in federal funding as a result of re-ordered priorities necessitated by the September 11, 2001 attack on New York City and by budget readjustment authority tied to highway trust fund income. As we mentioned earlier, hard choices may be ahead for many rural LPAs in Indiana. The Seventeen Strategies and some discussion may help with those choices.

Current funding sources remain generally the same as in 1984—the Highway Trust Fund for Federal Aid, and imposing user taxes at the state and local levels. This local issue will provide additional revenue if counties and municipalities take advantage of their ability to enable the Indiana General Assembly local option user taxes, *inter alia*.

The Seventeen Strategies

1. **Property taxes.** Not an expandable option today because of resistance to increasing the role of property taxes.
2. **Motor fuel taxes.** An option at the local level, but governed by the General Assembly. In Indiana, fuel taxes are levied at the state level.
3. **Motor vehicle fees and taxes.** In spite of resistance, this tax continues to be a viable option. It is considered more equitable because such taxes are tied to road and street use. Legislation would be required for public agencies to collect fuel taxes at the local level. Indiana’s local option taxes are an example of motor vehicle fees that can benefit the local level. As of the summer of 2001, only 24 counties in Indiana had enacted LOHUT.
4. **Parking taxes and fees.** Revenues can be dedicated to a variety of purposes, including transportation. These fees also help to reduce congestion in built-up areas.
5. **Tolls.** Cities and states can impose tolls to raise revenue for infrastructure. The Indiana Toll Road and the various toll roads in the Chicago area are some local examples. Tolls are also used in some cases to pay for upkeep of bridges. Early transportation infrastructure was funded in part by tolls, and toll roads were common in areas of Indiana during the post-canal period of the 19th century.
6. **Sales taxes.** These have been used to fund transportation in Indiana on a limited basis. Sales taxes are fairly well accepted by the public, but are resisted vehemently if they are considered to be regressive or unfair.
7. **Payroll or income taxes.** This option is used by some states and municipalities.
8. **Bond financing.** Bonds are a good source of short-term revenue in exchange for incurring long term debt. Bonds must be repaid with an identified revenue source. A number of options are available, but debt ceilings limit use.
9. **Impact fees.** A system where private developers pay for abatement of impacts of development. Requires local zoning board action.
10. **Street utility funds.** A street utility can be structured similar to the water and sewer utility, which is done in some areas.
11. **Billboard advertising.** Fees can be charged for off-premise advertising. This is considered a local matter and may be enacted by local ordinance.
12. **Advertising on public facilities.** Buses, parking meters and garbage trucks.
13. **Financing infrastructure from the state lottery.** It is an option that would require re-ordering priorities for Indiana’s current lottery funding from Build Indiana funds.

14. **Reducing costs by contracting out maintenance.** Although not revenue generating, this option can free funds for other purposes. Accurate forecasting and cost benefit analysis needed.
15. **Leasing transit vehicles.** Can be a least-cost option for transit operations as opposed to outright ownership of the asset.
16. **Private subsidies and incentives for transit.** Employers can subsidize transit fares for employees. It is not known how much this is done in Indiana. Purdue University and Greater Lafayette Transit Corporation (CityBus) have an arrangement that provides an incentive for Purdue students to ride the bus to campus, thus reducing congestion in the central campus area. (Indianapolis Star, 7-17-02)
17. **Developer financing.** There are a number of examples where developers and LPAs have cooperated in funding capital improvements. The tax increment financing option is used in Indiana to encourage economic development through planned tax abatement to generate jobs and pay for infrastructure.

Find the Money

This section will give local road and street officials a sense for some not-often-thought-of funding sources which, if leveraged, can free funds or generate additional funding and at the same time substitute non-restricted road and street funds that might be obligated for other purposes. Some of these additional or non-traditional sources are:

- **Community Development Block Grants and Department of Commerce Community Focus Grants.** The source of funds for both of these programs is the U.S. Department of Housing and Urban Development. There are two components to the CDBG program. The Entitlement Program provides direct assistance to local governments and urban counties, and the State and Small Cities Program provides funds to states who then give assistance to local governments in non-entitlement areas. This program is administered in Indiana by the Indiana Department of Commerce. Entitled areas receive their CDBG funding directly from the Department of Housing and Urban Development. Because of the need to determine area income eligibility and income determination rules, any entity planning to apply for a community development block grant or funding through the Indiana Department of Commerce Community Focus program should plan on a lead time of up to 18 months. The federal citation is 23 CFR 570. Contact the Indiana Department of Commerce Division of Community Development (www.state.in.us/doc/).
- **FHWA Transportation Enhancement Funds.** Surface transportation funds available for non-traditional transportation projects are discussed earlier in this chapter. Enhancement funding is subject to the same procurement rules as any surface transportation program

highway or road construction project. Contact INDOT at www.state.in.us/dot/.

- **USDA Rural Development Program.** Rural development is a mission area under USDA and includes Rural Utilities Service, Rural Housing Service and Rural Business Service. Indiana Rural Development works with agencies, groups and LPAs to address these needs. The USDA rural development program operates direct and guaranteed loan and grant programs designed to strengthen rural businesses, finance new or improved rural housing, build or improve water and waste water systems, develop community facilities and maintain and create rural employment. Contact Indiana Rural Development at www.rurdev.usda.gov/in/welcome.htm.
- **Federal Emergency Management Agency (FEMA) Funding.** Available for disaster assistance. Funding authorization requires declaration of a disaster by the Federal Government. Funds are available in these situations for housing and infrastructure repair, inter alia. FEMA's transportation response plan is comprehensive and focused on the transportation infrastructure and more operations in support of a major disaster. Included is assessment and mitigation of transportation asset damage and recognition of need to bring the system up to full operation to support disaster operations. FEMA has been instrumental in providing assistance following the attack on the New York City World Trade Center on September 11, 2001. Contact FEMA at www.fema.gov/.
- **Build Indiana Fund. Financed by the Indiana state lottery and gaming funds.** Once a good source for special projects, the BIF program has undergone some growing pains exacerbated by the State's current fiscal crisis. Contact local state legislators for updated information on the procedures for requesting and using Build Indiana Fund grants.
- **Grant Anticipation Revenue Vehicles (GARVEE).** A program by which notes, bonds or some other obligation can be used to secure funds in anticipation of receiving federal share funding. Use of GARVEE bonds was authorized by the National Highway System Designation Act of 1995 which expanded the types of bond-related costs that can be financed with federal highway funds. Specifically, states or local agencies could issue GARVEE bonds for transportation projects using future federal highway funds to repay principal, interest and other costs. Projects selected for GARVEE financing must be approved by the responsible FHWA division. The program is being used in California and a few other states. Authorized by federal law, the program is being set forth by FHWA as a method of financing highway, road and street projects. Contact FHWA or APWA for additional information.

Other federal funding, though limited, might be available because the LPA is located in a particular geographical area. Included are the defense and forest roads programs

administered by the department concerned. Funding leverage would be possible if a DOD facility or a national forest were located in the local agency's geographical area.

Questions and Answers About Highway Road and Street Funding

Motor Vehicle Highway Account

Q: What is the motor vehicle highway account (MVHA) and how is it used?

Answer: The motor vehicle highway account is the account of the general fund of the State to which are credited collections from motor vehicle registration fees, licenses, drivers' and chauffeurs' license fees, gasoline taxes, auto transfer fees, certificate of title fees, weight taxes or excise taxes, and all other similar special taxes, duties or excises of all kinds on motor vehicles, trailers, motor vehicle fuel or motor vehicle owners or operators. (IC 8-14-1-1) Funds from the MVHA are distributed monthly to local government units by the State Auditor. The net amount in the motor vehicle highway account is to be budgeted for traffic safety programs and for construction, reconstruction, improvement, maintenance, and policing of the State highways. (IC 8-14-1-2) The funds allocated to counties are to be used for construction, reconstruction and maintenance of the highways of the respective counties. (IC 8-14-1-4) All funds allocated to cities and towns are to be used for construction, reconstruction, repair, maintenance, oiling, sprinkling, snow removal, weed and tree cutting, and cleaning highways and curbs. The funds shall also be used for cities' or towns' share of the cost to separate the grades crossing public highways and railroads; purchase or lease of highway construction and maintenance equipment; purchase, erection, operation and maintenance of traffic signs and signals; and painting structures, objects and surfaces for highway safety and traffic regulation. (IC 8-14-1-5)

Local Road and Street Account

Q: How does a government unit obtain money from the local road and street account?

Answer: The state auditor distributes money from the local road and street account to local government units. This money is distributed monthly and no application is needed to obtain funding. (IC 8-14-2-4)

Q: How are funds allocated from the local road and street account fund?

Answer: The state auditor is required to allocate funds in the local road and street account on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the State. To determine the

sub-allocation between the county and the cities within, the auditor uses the following formula: 1) In counties with a population of more than 50,000, 60 percent of the money is distributed on the basis of population and 40 percent is distributed on the basis of the ratio of city and town street mileage to county road mileage. 2) In counties having a population of 50,000 or less, 20 percent of the money is distributed on the basis of population, and 80 percent on the basis of the ratio of city and town street mileage to county road mileage. (IC 8-14-2-4)

Q: How are funds from the local road and street account to be used?

Answer: Money from the local road and street account shall be used exclusively by the cities, towns and counties for engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems; payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects; or for any local costs required to undertake a recreational or reservoir road project (IC 8-14-2-5).

Cumulative Bridge Fund

Q: What is the cumulative bridge fund and how is it used?

Answer: All municipal corporations and boards of county commissioners are authorized to establish a cumulative bridge fund to provide funds for construction, maintenance and repair of bridges, approaches and grade separations. In counties that have established such a fund, the boards of county commissioners are responsible for providing funds for all bridges, including those in cities and towns within the county (except those bridges on the State highway system). County commissioners are also authorized to use this fund for making county-wide bridge inspections and safety ratings of all bridges not on the state highway system. Before this fund can be established, the proposed action of any municipal corporation or board of county commissioners to establish such a fund shall first be approved by the State Board of Tax Commissioners. (IC 8-16-3-1)

Q: Can interest earned on the investment of cumulative bridge funds be diverted to the general fund?

Answer: The answer appears to be no. IC 8-16-3 authorizes counties and municipalities to establish cumulative bridge funds to provide for construction, maintenance and repair of bridges, approaches and grade separations. The fund can also be used to pay for bridge inspections if they are performed by a qualified engineer and meet the Federal Highway Administration bridge inspection standards. The fund is established by a tax levy after the requirements of notice and subsequent approval by the State Board of Tax Commissioners have been met. Counties, cities and towns have the power

to levy a tax of not more than \$.30 per \$100 assessed valuation of all taxable real and personal property. Once collected, the statutes stipulate that the tax will be held in a special fund and will not be expended for any purpose other than that for which it was established. No expenditure can be made until a proper appropriation has been made. **IC 5-13-1** contains provisions for investment of public funds and disposition of interest derived from those investments. When authorized to do so, the county treasurer may invest tax collections in accordance with the provisions of the chapter. "The interest received on such investments shall be receipted into the county general fund." (**IC 5-13-1-3**) This would appear to authorize the application of interest on taxes collected to the general fund, but **IC 5-13-1-4** contains the stipulation that "... all interest derived from investments shall become part of the funds invested." Since the cumulative bridge fund is a separate fund for a specific purpose, it appears that interest accrued from the investment of cumulative bridge funds must become part of the fund and cannot be transferred to general funds.

Distressed Road Fund

Q: What is the distressed road fund? How does a county qualify, and what are the procedures for applying for these funds?

Answer: The distressed road fund is a non-budgetary, non-reverting fund created to provide financial assistance through loans to counties that have serious road and street deficiencies. A county must have a population over 9,000 but not more than 41,800 with variations. (**IC 8-14-8-3**) To be eligible, the county must adopt the county motor excise surtax and the county wheel tax and not have issued bonds. (**IC 8-14-8-4**) The distressed road fund application must include a map depicting all roads and streets in the applicant's system and a copy of that county's proposed program of work covering the current and the next calendar year. The Department of Highways will notify its approval or disapproval within 60 days. A county has up to ten years for repayment with no interest. If the loan is not fully repaid at the end of this period, the county is subject to an interest rate of twelve percent (12 percent) per year. (**IC 8-14-8-4** and **8-14-8-7**)

Wheel Tax

Q: How is the wheel tax adopted and by whom?

Answer: The county council of any county may adopt an ordinance imposing an annual wheel tax on buses, recreational vehicles, semi trailers, tractors, trailers, and trucks that are registered in the county and not: a) owned by the State, a state agency, or a political subdivision; b) subject to the annual license excise surtax; or c) a bus owned and operated by a religious or nonprofit youth organization and used to transport persons to religious

services or for the benefit of their members. The county council must concurrently adopt an ordinance imposing the annual license surtax. (**IC 6-3.5-5-2** to **6-3.5-5-4**)

Q: How are wheel tax revenues to be used?

Answer: They are to be allocated among the county and the cities and towns in the county by the county auditor. The county may use its wheel tax revenues to construct, reconstruct, repair or maintain streets and roads under its jurisdiction. No other use is allowed. (**IC 6-3.5-5-15**)

County Motor Vehicle Excise Surtax

Q: How is the motor vehicle excise surtax established and applied?

Answer: Any county that has adopted an ordinance to impose the wheel tax described above may concurrently adopt an ordinance to impose an excise surtax. The surtax applies only to passenger vehicles, motorcycles and trucks with a gross weight not exceeding eleven thousand (11,000) pounds. The county council may impose a surtax of not less than two percent (2 percent) or more than ten percent (10 percent) of the annual license excise tax imposed on the registration of a vehicle. However, the total surtax on any vehicle may not be less than seven dollars and fifty cents (\$7.50). The same rate must be imposed on all applicable vehicles registered in the county. (**IC 6-3.5-4-2** and **IC 6-3.5-4-7**)

Q: How is the surtax collected, allocated and used?

Answer: The surtax shall be collected by the branch office of the Bureau of Motor Vehicles and deposited by the branch manager into a separate account to be remitted on or before the tenth day of the month to the county treasurer of the county imposing the tax. (**IC 6-3.5-4-8** and **IC 6-3.5-4-9**) In any county not containing a consolidated city, the county treasurer shall deposit the surtax revenues into a fund called the County Surtax Fund. Before the twentieth (20th) day of each month, the county auditor shall allocate the money in this fund to the county and the cities and towns contained in the county, using the formula for the distribution of local road and street account funds. The county treasurer shall distribute these funds by the twenty-fifth (25th) day of each month. Surtax revenues may be used by a county, city or town only to construct, reconstruct, repair, or maintain the streets in its jurisdiction. (**IC 6-3.5-4-13**)

Cumulative Capital Improvement Fund

Q: How may the cumulative capital improvement fund be used?

Answer: The common council of each city and the board of trustees of each town shall, by ordinance or resolution, establish a cumulative capital improvement fund for the

city or town. The city or town may use money in its cumulative capital improvement fund only to: 1) purchase land, easement, or right-of-ways; 2) purchase buildings; 3) construct or improve city-owned property; or 4) retire general obligation bonds issued by the city or town. Any city or town may at any time, by ordinance or resolution, transfer to its general fund any money derived which has been deposited in the city's or town's cumulative capital improvement fund. (IC 6-7-1-31.1)

Bonding for Local Roads and Streets

Q: Can bonds be issued to finance local road and street work?

Answer: Under the provisions of IC 8-18-22, the county council reacts to a request from the board of commissioners to authorize issuing bonds to fund county highways and bridges. The county council must give notice of a public hearing to disclose the purpose for which the bonds are to be issued, amount of the proposed issue and other pertinent data. Revenues for the payment of principal and interest on the bonds may be pledged from most motor vehicle-related taxes and other unappropriated or unencumbered money. The county council may not pledge property tax revenues to the bonds, except for revenues from the county cumulative bridge or major bridge fund. The works board (board of commissioners for a county without a consolidated city, board of public works or board of public works and safety for a city, or board of trustees for a town) may issue bonds in anticipation of collecting the assessments for an improvement. These bonds shall be issued and sold in the manner prescribed for other bonds of the unit. (IC 36-9-18-31)

Special Problems and Projects

Q: How can a city or town pay for street lights?

Answer: The funds allocated to cities and towns from the motor vehicle highway account may be used for street light installation if it is a matter of traffic safety. (IC 8-14-1-5) With regard to paying the utility company supplying electricity, the municipality shall pay the entire annual cost of lighting street intersections, and not less than thirty-five percent (35 percent) of the annual cost of lighting the remainder of the lighting system, with the exact percentage fixed by the municipal works board through its general funds or from a fund set aside for street lighting purposes. The remaining annual cost of the lighting system shall be assessed against each lot or parcel of real property in the city block or blocks in front of which the lighting system is located. (IC 36-9-9-9)

Federal aid Highway Funds

Q: How are federal aid highway funds made available to local governments?

Answer: The Federal Highway Administration is the agency responsible for the federal aid program. The Indiana Department of Transportation has primary responsibility for implementing the federal aid program. The department coordinates closely with the counties in managing approval and distribution of federal funds, which must be matched by local funds in a proportion determined by the project type. Federal aid projects must not be initiated without FHWA approval. Local officials contemplating projects should coordinate closely with the various staff elements of INDOT to avoid delays and violations as the project progresses.

General Local Funding Considerations

Q: In general, how are funds raised by the State, counties and municipalities for highways, roads and streets?

Answer: In accordance with statutory provisions, funds for highway construction, improvement, maintenance, repair and other highway purposes may be raised by the State and distributed to local governments by issuing bonds payable from taxes or special assessments, or from revenues collected by tolls for road use. (West's Indiana Law Encyclopedia, Section 97 - Highways)

Q: How must the county highway fund be appropriated?

Answer: The county council is required to appropriate funds for operation of the county highway department for the entire budget year. The appropriation is to be not less than the greater of 75 percent of the estimated highway fund, or 99 percent if the county commissioners have filed a four-year plan for construction and improvement, and a one-year maintenance and repair plan for county highways. (IC 6-1.118-8)

Funding Statutes

IC 5-22-17-1

Sec. 1. A governmental body may not enter into a cost plus a percentage of cost contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-2

Sec. 2. A governmental body may enter into a cost reimbursement contract if the purchasing agent determines in writing that the contract is likely to be less costly to the governmental body than any other contract type, or that it is impracticable to obtain the supplies required except under such a contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-3

Sec. 3. (a) This section does not apply to a discounted contractual arrangement for services or supplies funded through a designated leasing entity.

(b) Subject to subsections (c) through (e) and section 5 of this chapter, a contract for supplies may be entered into for a period not to exceed four (4) years.

(c) County and municipal hospitals may contract for the purchase of supplies for more than one (1) year but not more than five (5) years if the supplies are purchased under IC 5-22-7.

(d) The contract must specify that payment and performance obligations are subject to the appropriation and availability of funds.

(e) A political subdivision must have available a sufficient appropriation balance or an approved additional appropriation before a purchasing agent may award a contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-4

Sec. 4. (a) A contract that contains a provision for escalation of the price of the contract may be renewed under this section if the price escalation is computed using:

(1) a commonly accepted index named in the contract; or

(2) a formula set forth in the contract.

(b) Subject to section 5 of this chapter, with the agreement of the contractor and the purchasing agency, a contract may be renewed any number of times.

(c) The term of a renewed contract may not be longer than the term of the original contract.

As added by P.L.49-1997, SEC.1. Amended by P.L.153-1999, SEC.5.

IC 5-22-17-5

Sec. 5. (a) When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled.

(b) A determination by the fiscal body that funds are not appropriated or otherwise available to support continuation of performance is final and conclusive.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-6

Sec. 6. (a) The purchasing agent may specify in a contract that early performance of the contract will result in increased compensation at either:

(1) a percentage of the contract amount; or

(2) a specific dollar amount; determined by the purchasing agent.

(b) The purchasing agent may specify in a contract that completion of the contract after the termination date of the contract will result in a deduction from the compensation in the contract at either:

(1) a percentage of the contract amount; or

(2) a specific dollar amount; determined by the purchasing agent.

(c) Notice of inclusion of contract provisions permitted under this section in a contract must be included in the solicitation.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-9

Sec. 9. A contract entered into by a state agency may require the contractor to offer to political subdivisions the services or supplies that are the subject of the contract under conditions specified in the contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-10

Sec. 10. (a) As used in this section, "petroleum products" includes the following:

(1) Gasoline.

(2) Fuel oils.

(3) Lubricants.

(4) Liquid asphalt.

(b) A purchasing agent may award a contract for petroleum products to:

(1) the lowest responsible and responsive offeror; or

(2) all responsible and responsive offerors.

(c) A contract entered into under this section may allow for the escalation or de-escalation of price.

(d) This subsection applies to a petroleum products contract that is awarded to all responsible and responsive offerors as provided in subsection (b). The purchasing agent must purchase the petroleum products from the lowest of the responsible and responsive bidders. The contract must provide that the bidder from whom petroleum products are being purchased shall provide five (5) business days' written notice of any change in price. Upon receipt of written notice, the purchasing agent shall request current price quotes in writing based upon terms and conditions of the original offer (as awarded) from all successful responsible and responsive offerors. The purchasing agent shall record the quotes in minutes or memoranda. The purchasing agent shall purchase the petroleum products from the lowest responsible and responsive offeror, taking into account the price change of the current supplier and the price quotes of the other responsible and responsive offerors.

As added by P.L.49-1997, SEC.1.

IC 5-22-17-11

Sec. 11. A county may award a sand, gravel, asphalt paving materials, or crushed stone contract to more than one (1) responsible and responsive offeror if both of the following apply:

- (1) The specifications allow for offers to be based upon service to specific geographic areas.
- (2) The contracts are awarded by geographic area. The county is not required to describe the geographic areas in the specifications.

As added by P.L.7-1998, SEC.7.

IC 5-22-17-12

Sec. 12. (a) A solicitation may provide that offers will be received and contracts will be awarded separately or for any combination of a line or a class of supplies or services contained in the solicitation.

(b) If the solicitation does not indicate how separate contracts might be awarded, the purchasing agent may award separate contracts to different offerors under this section only if the purchasing agent makes a written determination showing that the award of separate contracts is in the interest of efficiency or economy.

(c) If the purchasing agent awards a contract for a line or class of supplies or services, or any combination of lines or classes, to an offeror other than the lowest offeror, the purchasing agent must make a written determination stating the reasons for awarding a contract to that offeror.

As added by P.L.7-1998, SEC.8.

IC 5-22-17-13

Sec. 13. A solicitation may provide that the purchasing agent will award a contract for supplies or services for an unspecified number of items at a fixed price per unit. Such a contract may include a formula or a method for escalation of the unit price.

As added by P.L.7-1998, SEC.9.

IC 5-22-17-14

Sec. 14. A contract awarded under this article must include the requirements of IC 5-22-15-25(c) unless the head of the purchasing agency makes a determination under IC 5-22-15-25(d).

As added by P.L.194-2001, SEC.3.

IC 5-22-2

IC 5-22-2-1

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-2

Sec. 2. "Change order" means a written order that:

- (1) is signed by the purchasing agent; and
- (2) directs the contractor to make changes that the contract authorizes the purchasing agent to order without the consent of the contractor.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-3

Sec. 3. "Contract modification" means a written alteration:

(1) in a specification, delivery point, rate of delivery, period of performance, price, quantity, or another provision of a contract; and

(2) accomplished by mutual action of the parties to the contract.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-4

Sec. 4. "Contractor" refers to a person who has a contract with a governmental body.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-5

Sec. 5. "Cost reimbursement contract" means a contract that entitles a contractor to receive:

(1) reimbursement for costs that are allowable and allocable in accordance with the contract terms and the provisions of this article; and

(2) a fee, if any.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-6

Sec. 6. "Data" means recorded information, regardless of its form or characteristics.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-7

Sec. 7. "Data processing" has the meaning set forth in IC 4-23-16-5(a).

As added by P.L.49-1997, SEC.1.

IC 5-22-2-8

Sec. 8. "Designee" means an authorized representative.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-9

Sec. 9. "Established catalog price" refers to the price included in a catalog, price list, schedule, or other form that:

(1) is regularly maintained by the manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public, for the supplies or services involved.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-10

Sec. 10. "Executive branch" refers to the department of state government provided in Articles 5 and 6 of the Constitution of the State of Indiana.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-11

Sec. 11. "Fiscal body" means the following:

(1) For a state agency, the term refers to the budget agency.

(2) For a political subdivision, the term has the meaning set forth in IC 36-1-2-6.

(3) For a governmental body not described in subdivision (1) or (2), the term means the person that has primary responsibility for the fiscal affairs of the governmental body.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-12

Sec. 12. "Gift" includes a bequest, cooperative agreement, and grant.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-13

Sec. 13. "Governmental body" means an agency, a board, a branch, a bureau, a commission, a council, a department, an institution, an office, or another establishment of any of the following:

(1) The executive branch.

(2) The judicial branch.

(3) The legislative branch.

(4) A political subdivision.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-14

Sec. 14. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-15

Sec. 15. "Judicial branch" refers to the department of state government provided in Article 7 of the Constitution of the State of Indiana.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-16

Sec. 16. "Legislative branch" refers to the department of state government provided in Article 4 of the Constitution of the State of Indiana.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-17

Sec. 17. (a) "Offer" means a response to a solicitation.

(b) The term includes a bid, proposal, and quote.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-18

Sec. 18. "Offeror" means a person that submits an offer to a governmental body.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-19

Sec. 19. "Operating agreement" has the meaning set forth in IC 5-23-2-7.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-20

Sec. 20. "Person" includes an association, a business, a committee, a corporation, a fiduciary, an individual, a joint stock company, a joint venture, a limited liability company, a partnership, a sole proprietorship, a trust, or another legal entity, organization, or group of individuals.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-21

Sec. 21. "Policy" refers to a governmental body's or purchasing agency's written statement of:

- (1) purchasing procedure; or
- (2) substantive purchasing purposes; that does not have the force and effect of law.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-22

Sec. 22. "Political subdivision" has the meaning set forth in IC 36-1-2-13.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-23

Sec. 23. (a) "Public funds" means money:

- (1) derived from the revenue sources of the governmental body; and
 - (2) deposited into the general or a special fund of the governmental body.
- (b) The term does not include either of the following:
- (1) Money received by any person managing or operating a public facility under an authorized operating agreement under IC 5-23.
 - (2) Proceeds of bonds payable exclusively by a private entity.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-24

Sec. 24. (a) "Purchase" includes buy, procure, rent, lease, or otherwise acquire.

(b) The term includes the following activities:

- (1) Description of requirements.
- (2) Solicitation or selection of sources.
- (3) Preparation and award of contract.
- (4) All phases of contract administration.
- (5) All functions that pertain to purchasing.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-25

Sec. 25. "Purchasing agency" means a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-26

Sec. 26. "Purchasing agent" means an individual authorized by a purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-27

Sec. 27. (a) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased.

(b) The term includes specifications attached to, or made a part of, the solicitation.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-28

Sec. 28. "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-29

Sec. 29. "Rule" refers to the following:

- (1) With respect to an agency of the executive branch, a rule adopted under IC 4-22-2.
- (2) With respect to a governmental body not described in subdivision (1), an order, an ordinance, a resolution, or another procedure by which the governmental body is authorized by law to adopt a policy that has the force and effect of law.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-30

Sec. 30. "Services" means the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-31

Sec. 31. "Social services" means services obtained from funds covered by IC 12-13-10.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-32

Sec. 32. (a) "Solicitation" means the procedure by which a governmental body invites persons to submit an offer to enter into a contract with the governmental body for the purchase or sale of supplies by the governmental body.

(b) The term includes an invitation for bids, a request for proposals, and a request for quotes.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-33

Sec. 33. "Special fund", as used with respect to the state, means a dedicated fund.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-34

Sec. 34. "Special purchase" refers to a purchase authorized under IC 5-22-10.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-35

Sec. 35. (a) "Specification" means a description of the physical or functional characteristics of a supply or service or the nature of a supply or service.

(b) The term includes a description of any requirements for inspecting, testing, or preparing a supply or service for delivery.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-36

Sec. 36. "State agency" has the meaning set forth in IC 4-13-1-1.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-37

Sec. 37. "State educational institution" has the meaning set forth in IC 20-12-0.5-1.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-38

Sec. 38. (a) "Supplies" means any property.

(b) The term includes equipment, goods, and materials. The term does not include an interest in real property.

As added by P.L.49-1997, SEC.1.

IC 5-22-2-39

Sec. 39. "Using agency" means a governmental body that uses supplies or services purchased under this article.

As added by P.L.49-1997, SEC.1.

IC 5-22-4**IC 5-22-4-2**

Sec. 2. (a) Except as provided in subsection (c), the Indiana department of transportation is the purchasing agency for the Indiana department of transportation.

(b) Except as provided in subsection (c), the individuals designated by the commissioner of the Indiana department of transportation are the purchasing agents for the Indiana department of transportation.

(c) Notwithstanding subsections (a) and (b), the Indiana department of transportation may request the Indiana department of administration to make purchases for the Indiana department of transportation. If the Indiana department of transportation makes a request under this subsection, section 1 of this chapter applies to those purchases.

As added by P.L.49-1997, SEC.1.

IC 5-22-4-5

Sec.5. (a) The purchasing agency for a political subdivision is the person designated by law or by rule of the governmental body.

(b) The individuals designated by the purchasing agency are the purchasing agents for the governmental body.

As added by P.L.49-1997, SEC.1.

IC 6-3.5-4. County Motor Vehicle Excise Surtax**IC 6-3.5-4-1.**

Sec. 1. As used in this chapter:

"Branch office" means a branch office of the bureau of motor vehicles.

"County council" includes the city-county council of a county that contains a consolidated city of the first class.

"Motor vehicle" means a vehicle which is subject to the annual license excise tax imposed under IC 6-6-5.

"Net annual license excise tax" means the tax due under IC 6-6-5 after the application of the adjustments and credits provided by that chapter.

"Surtax" means the annual license excise surtax imposed by a county council under this chapter.

As added by Acts 1980, P.L.10, SEC.4.

IC 6-3.5-4-2

Sec. 2. (a) The county council of any county may, subject to the limitation imposed by subsection (c), adopt an ordinance to impose an annual license excise surtax at the same rate or amount on each motor vehicle listed in subsection (b) that is registered in the county. The county council may impose the surtax either:

(1) at a rate of not less than two percent (2%) nor more than ten percent (10%); or

(2) at a specific amount of at least seven dollars and fifty cents (\$7.50) and not more than twenty-five dollars (\$25.00). However, the surtax on a vehicle may not be less than seven dollars and fifty cents (\$7.50). The county council shall state the surtax rate or amount in the ordinance which imposes the tax.

(b) The license excise surtax applies to the following vehicles:

(1) Passenger vehicles.

(2) Motorcycles.

(3) Trucks with a declared gross weight that does not exceed eleven thousand (11,000) pounds.

(c) The county council may not adopt an ordinance to impose the surtax unless it concurrently adopts an ordinance under IC 6-3.5-5 to impose the wheel tax.

(d) Notwithstanding any other provision of this chapter or IC 6-3.5-5, ordinances adopted by a county council before June 1, 1983, to impose or change the annual license excise surtax and the annual wheel tax in the county remain in effect until the ordinances are amended or repealed under this chapter or IC 6-3.5-5.

As added by Acts 1980, P.L.10, SEC.4. Amended by P.L.85-1983, SEC.1; P.L.255-1996, SEC.1.

IC 6-3.5-4-3

YAMD.1994

Sec. 3. If a county council adopts an ordinance imposing the surtax after December 31 but before July 1 of the following year, a motor vehicle is subject to the tax if it is registered in the county after December 31 of the year in which the ordinance is adopted. If a county council adopts an ordinance imposing the surtax after June 30 but before the following January 1, a motor vehicle is subject to the tax if it is registered in the county after December 31 of the year following the year in which the ordinance is adopted. However, in the first year the surtax is effective, the surtax does not apply to the registration of a motor vehicle for the registration year that commenced in the calendar year preceding the year the surtax is first effective.

As added by Acts 1980, P.L.10, SEC.4. Amended by P.L.85-1983, SEC.2; P.L.43-1994, SEC.1.

IC 6-3.5-4-4

Sec. 4. (a) After January 1 but before July 1 of any year, the county council may, subject to the limitations imposed by subsection (b), adopt an ordinance to rescind the surtax. If the county council adopts such an ordinance, the surtax does not apply to a motor vehicle registered after December 31 of the year the ordinance is adopted.

(b) The county council may not adopt an ordinance to rescind the surtax unless it concurrently adopts an ordinance under IC 6-3.5-5 to rescind the wheel tax. In addition, the county council may not adopt an ordinance to rescind the surtax if any portion of a loan obtained by the county under IC 8-14-8 is unpaid, or if any bonds issued by the county under IC 8-14-9 are outstanding.

As added by Acts 1980, P.L.10, SEC.4. Amended by Acts 1981, P.L.88, SEC.1.

IC 6-3.5-4-5

Sec. 5. (a) The county council may, subject to the limitations imposed by subsection (b), adopt an ordinance to increase or decrease the surtax rate or amount. The new surtax rate or amount must be within the range of rates or amounts prescribed by section 2 of this chapter. A new rate or amount that is established by an ordinance that is adopted after December 31 but before July 1 of the following year applies to motor vehicles registered after December 31 of the year in which the ordinance to change the rate or amount is adopted. A new rate or amount that is established by an ordinance that is adopted after June 30 but before January 1 of the following year applies to motor vehicles registered after December 31 of the year following the year in which the ordinance is adopted.

(b) The county council may not adopt an ordinance to decrease the surtax rate or amount under this section if any portion of a loan obtained by the county under IC 8-14-8 is unpaid, or if any bonds issued by the county under IC 8-14-9 are outstanding.

As added by Acts 1980, P.L.10, SEC.4. Amended by Acts 1981, P.L.88, SEC.2; P.L.85-1983, SEC.3; P.L.255-1996, SEC.2.

IC 6-3.5-4-6

Sec.6. If a county council adopts an ordinance to impose, rescind, or change the rate or amount of the surtax, the county council shall send a copy of the ordinance to the commissioner of the bureau of motor vehicles.

As added by Acts 1980, P.L.10, SEC.4. Amended by P.L.255-1996, SEC.3.

IC 6-3.5-4-7

Sec. 7. A person may not register a motor vehicle in a county that has adopted the surtax unless the person pays the surtax due, if any, to the bureau of motor vehicles. The amount of the surtax due equals the greater of seven dollars and fifty cents (\$7.50), the

amount established under section 2 of this chapter, or the product of:

(1) the amount determined under section 7.3 of this chapter for the vehicle, as adjusted under section 7.4 of this chapter; multiplied by

(2) the surtax rate in effect at the time of registration. The bureau of motor vehicles shall collect the surtax due, if any, at the time a motor vehicle is registered. However, the bureau may utilize its branch offices to collect the surtax.

As added by Acts 1980, P.L.10, SEC.4. Amended by P.L.85-1983, SEC.4; P.L.33-1990, SEC.11; P.L.255-1996, SEC.4; P.L.11-1999, SEC.1.

IC 6-3.5-4-7.3

Sec. 7.3. (a) The amount of surtax imposed by rate under this chapter shall be based upon the classification and age of a vehicle as determined by the bureau of motor vehicles under IC 6-6-5, in accordance with the schedule set out in subsection (b)

(b) The schedule to be used in determining the amount to be used in section 7 of this chapter is as follows:

Year of Manufacture

	I	II	III	IV	V
1st	\$12	\$36	\$60	\$96	\$132
2nd	12	30	51	84	114
3rd	12	27	42	72	96
4th	12	24	33	60	78
5th	12	18	24	48	66
6th	12	12	18	36	54
7th	12	12	12	24	42
8th	12	12	12	18	24
9th	12	12	12	12	12
10th	12	12	12	12	12

and thereafter

Year of Manufacture

	VI	VII	VIII	IX	X
1st	\$168	\$206	\$246	\$300	\$344
2nd	147	184	220	268	298
3rd	126	154	186	230	260
4th	104	127	156	196	224
5th	82	101	128	164	191
6th	63	74	98	130	157
7th	49	60	75	104	129
8th	30	40	54	80	106
9th	18	21	34	40	50
10th	12	12	12	12	12

and thereafter

Year of Manufacture

	XI	XII	XIII	XIV	XV
1st	\$413	\$500	\$600	\$700	\$812
2nd	358	434	520	607	705
3rd	312	378	450	529	614
4th	269	326	367	456	513
5th	229	278	300	389	420
6th	188	228	242	319	338
7th	155	188	192	263	268
8th	127	129	129	181	181
9th	62	62	62	87	87
10th	21	26	30	36	42

and thereafter

Year of Manufacture

	XVI	XVII
1st	\$938	\$1,063
2nd	814	922
3rd	709	795
4th	611	693
5th	521	591
6th	428	483
7th	353	383
8th	258	258
9th	125	125
10th	49	55

and thereafter

As added by P.L.33-1990, SEC.12. Amended by P.L.255-1996, SEC.5.

IC 6-3.5-4-7.4

Sec. 7.4. (a) If a vehicle has been acquired or brought into Indiana, or for any other reason becomes subject to registration after the regular annual registration date in the year on or before which the owner of the vehicle is required under the motor vehicle registration laws of Indiana to register vehicles, the amount of surtax computed under section 7.3 of this chapter shall be reduced in the same manner as the excise tax is reduced under IC 6-6-5-7

(b) The owner of a vehicle who sells the vehicle in a year in which the owner has paid the surtax imposed by this chapter is entitled to receive a credit that is calculated in the same manner and subject to the same requirements as the credit for the excise tax under IC 6-6-5-7.

(c) If the name of the owner of a vehicle is legally changed and the change has caused a change in the owner's annual registration date, the surtax liability of the owner shall be adjusted in the same manner as excise taxes are adjusted under IC 6-6-5-7.

As added by P.L.11-1999, SEC.2.

IC 6-3.5-4-8

Sec. 8. The surtax collected by a branch office shall be deposited daily by the branch manager in a separate account in a depository designated by the state board of finance.

As added by Acts 1980, P.L.10, SEC.4.

IC 6-3.5-4-9

Sec. 9. On or before the tenth day of the month following the month in which surtax is collected at a branch office, the branch office manager shall remit the surtax to the county treasurer of the county that imposed the surtax. Concurrently with the remittance, the branch office manager shall file a surtax collections report with the county treasurer and the county auditor. The branch manager shall prepare the report on forms prescribed by the state board of accounts.

As added by Acts 1980, P.L.10, SEC.4.

IC 6-3.5-4-10

Sec. 10. Each branch office manager shall report surtax collections, if any, to the bureau of motor vehicles at the same time that registration fees are reported.

As added by Acts 1980, P.L.10, SEC.4.

IC 6-3.5-4-11

Sec. 11. If surtax is collected directly by the bureau of motor vehicles, instead of at a branch office, the commissioner of the bureau shall:

(1) remit the surtax to, and file a surtax collections report with, the appropriate county treasurer; and

(2) file a surtax collections report with the county auditor; in the same manner and at the same time that a branch office manager is required to remit and report under section 9 of this chapter.

As added by Acts 1980, P.L.10, SEC.4.

IC 6-3.5-4-12

Sec. 12. In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the surtax to the department of transportation established by IC 36-3-5-4 for use by the department under law. The city-county council may not appropriate money derived from the surtax for any other purpose.

As added by Acts 1980, P.L.10, SEC.4. Amended by Acts 1982, P.L.33, SEC.7.

IC 6-3.5-4-13

Sec. 13. (a) In the case of a county that does not contain a consolidated city of the first class, the county treasurer shall deposit the surtax revenues in a fund to be known as the "_____ County Surtax Fund."

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county surtax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county surtax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the surtax revenues it receives under this section to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction.

As added by Acts 1980, P.L.10, SEC.4. Amended by P.L.85-1983, SEC.5.

IC 6-3.5-4-14

Sec. 14. (a) On or before August 1 of each year, the auditor of a county that contains a consolidated city of the first class and that has adopted the surtax shall provide the county council with an estimate of the surtax revenues to be received by the county during the next calendar year. The county shall show the estimated surtax revenues in its budget estimate for the calendar year.

(b) On or before August 1 of each year, the auditor of a county that does not contain a consolidated city of the first class and that has adopted the surtax shall provide the county and each city and town in the county with an estimate of the surtax revenues to be distributed to that unit during the next calendar year. The county, city, or town shall show the estimated surtax revenues in its budget estimate for the calendar year.

As added by Acts 1980, P.L.10, SEC.4.

IC 6-3.5-4-15

Sec. 15. Each license branch shall collect the service charge prescribed under IC 9-29 for the surtax collected with respect to each vehicle registered by that branch.

As added by Acts 1980, P.L.10, SEC.4. Amended by P.L.42-1986, SEC.3; P.L.2-1991, SEC.37.

IC 6-3.5-4-16

Sec. 16. (a) The owner of a motor vehicle who knowingly registers the vehicle without paying surtax imposed under this chapter with respect to that registration commits a Class B misdemeanor.

(b) An employee of the bureau of motor vehicles, an employee of a branch office, or the manager of a branch office who recklessly issues a registration on any motor vehicle without collecting surtax imposed under this chapter with respect to that registration commits a Class B misdemeanor.

As added by Acts 1980, P.L.10, SEC.4.

IC 8-14-1-5

Sec.5. (a) All funds allocated to cities and towns from the motor vehicle highway account shall be used by the cities and towns for the construction, reconstruction, repair, maintenance, oiling, sprinkling, snow removal, weed and tree cutting and cleaning of their highways as herein defined, and including also any curbs, and the city's or town's share of the cost of the separation of the grades of crossing of public highways and railroads, the purchase or lease of highway construction and maintenance equipment, the purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices; and the painting of structures, objects, surfaces in highways for purposes of safety and traffic regulation. All of such funds shall be budgeted as provided by law.

(b) In addition to purposes for which funds may be expended under subsections (a) and (c) of this section, monies allocated to cities and towns under this chapter may be expended for law enforcement purposes, subject to the following limitations:

(1) For cities and towns with a population of less than five thousand (5,000), no more than fifteen percent (15%) may be spent for law enforcement purposes.

(2) For cities and towns other than those specified in subdivision (1) of this subsection, no more than ten percent (10%) may be spent for law enforcement purposes.

(c) In addition to purposes for which funds may be expended under subsections (a) and (b) of this section, monies allocated to cities and towns under this chapter may be expended for the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects.

(Formerly: Acts 1941, c.168, s.5; Acts 1945, c.164, s.1; Acts 1959, c.278, s.1; Acts 1965, c.121, s.1.) As amended by Acts 1981, P.L.111, SEC.3; P.L.61-2000, SEC.1.

IC 8-14-2

IC 8-14-2-1

Sec. 1. As used in this chapter:

(1) Primary highway system special account means the account of the state known as the "primary highway system special account" to which is credited monthly fifty-five percent (55%) of the money deposited in the highway, road, and street fund.

(2) Local road and street account means the account of the state known as the "local road and street account" to which is credited monthly forty-five percent (45%) of the money deposited in the highway, road and street fund.

(3) The term "department" refers to the Indiana department of transportation created under IC 8-23-2.

(4) The term "primary highways" shall mean that portion of the federal aid highway system designated by the department and approved by the United States department of transportation as being the state "primary highway system."

(5) The term "construction" shall mean both construction and reconstruction to a degree that new, supplementary, or substantially improved traffic service is provided, and significant geometric or structural improvements are effected.

(6) "Arterial road system" shall mean the system of roads including bridges in each county of Indiana, under the jurisdiction of the board of county commissioners, or successor body, including a department of transportation of a consolidated city, designated as such by the board under IC 8-23-4-3, but not including local county roads.

(7) "Local county roads" shall mean all county roads and bridges which are not designated as being in the arterial road system.

(8) "Arterial street system" means the system of streets, including bridges in each city or town in Indiana, under the jurisdiction of municipal street authorities or successor bodies, including a department of transportation of a consolidated city, designated as such by the board under IC 8-23-4-4, but not including local streets.

(9) "Local streets" shall mean all city and town streets and bridges which are not designated as being in the arterial street system in each city or town.

(10) "Resurfacing" means the placement of additional pavement layers (including protective systems for bridge decks) over the existing (or restored or rehabilitated) roadway or bridge deck surface to provide additional strength or to improve serviceability for a substantial time period.

(11) "Restoration and rehabilitation" means work required to return the existing structure (roadway pavement or bridge deck) to a suitable condition for an additional stage of construction (bridge deck protective system or resurfacing) or to a suitable condition to perform satisfactorily for a substantial time period.

(Formerly: Acts 1969, c.392, s.1; Acts 1971, P.L.98, SEC.1; Acts 1973, P.L.71, SEC.1.) As amended by Acts 1978, P.L.58, SEC.1; Acts 1980, P.L.74, SEC.217; Acts 1981, P.L.41, SEC.50; P.L.18-1990, SEC.109.

IC 8-14-2-2

Sec. 2. It is hereby declared to be the intent of the general assembly that the monies deposited in the primary highway system special account and the local road and street account shall be used exclusively for engineering, land acquisition, construction, resurfacing, restoration, and rehabilitation of highway facilities.

(Formerly: Acts 1969, c.392, s.2; Acts 1971, P.L.98, SEC.2; Acts 1973, P.L.71, SEC.2; Acts 1975, P.L.90, SEC.1.) As amended by Acts 1978, P.L.58, SEC.2.

IC 8-14-2-2.1

Sec. 2.1. The auditor shall create a special fund to be known as the "Highway, Road and Street Fund" for the deposit of the revenues from:

(1) the gasoline and special fuel taxes dedicated to the fund under IC 6-6-1.1-802 and IC 6-6-2.5; and

(2) the increases in fees levied under IC 9-29-4, IC 9-29-5, IC 9-29-9, and IC 9-29-11, which increases are attributable to Acts 1969, Chapter 321, SECTION 1.

(Formerly: Acts 1971, P.L.98, SEC.3.) As amended by Acts 1978, P.L.58, SEC.3; Acts 1980, P.L.51, SEC.62; P.L.2-1991, SEC.60; P.L.277-1993(ss), SEC.55.

IC 8-14-2-3

Sec. 3. (a) The auditor of state shall credit the state highway fund established under IC 8-23-9-54 monthly with fifty-five percent (55%) of the money deposited in the highway, road and street fund.

(b) Funds allocated to the department under this chapter must be appropriated.

(Formerly: Acts 1969, c.392, s.3; Acts 1971, P.L.98, SEC.4; Acts 1975, P.L.90, SEC.2.) As amended by Acts 1978, P.L.58, SEC.4; Acts 1980, P.L.74, SEC.218; Acts 1981, P.L.111, SEC.4; P.L.18-1990, SEC.110.

IC 8-14-2-4

Sec. 4. (a) The auditor of state shall establish a special account to be called the "local road and street account" and credit this account monthly with forty-five percent (45%) of the money deposited in the highway road and street fund.

(b) The auditor shall distribute to units of local government money from this account each month.

(c) The auditor of state shall allocate to each county the money in this account on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the state. The auditor shall further determine the sub-allocation between the county and the cities within the county as follows:

(1) In counties having a population of more than fifty thousand (50,000), sixty percent (60%) of the money shall be distributed on the basis of the population of the city or town as a percentage of the total population of the county and forty percent (40%) distributed on the basis of the ratio of city and town street mileage to county road mileage.

(2) In counties having a population of fifty thousand (50,000) or less, twenty percent (20%) of the money shall be distributed on the basis of the population of the city or town as a percentage of the total population of the county and eighty percent (80%) distributed on the basis of the ratio of city and town street mileage to county road mileage.

(3) For the purposes of allocating funds as provided in this section, towns which become incorporated as a town between the effective dates of decennial censuses shall be eligible for allocations upon the effectiveness of a corrected population count for the town under IC 1-1-3.5.

(4) Money allocated under the provisions of this section to counties containing a consolidated city shall be credited or allocated to the department of transportation of the consolidated city.

(d) Each month the auditor of state shall inform the department of the amounts allocated to each unit of local government from the local road and street account.

(Formerly: Acts 1969, c.392, s.4; Acts 1971, P.L.98, SEC.5; Acts 1973, P.L.71, SEC.3; Acts 1974, P.L.33, SEC.1.) As amended by Acts 1978, P.L.58, SEC.5; Acts 1980, P.L.74, SEC.219; Acts 1981, P.L.11, SEC.54; Acts 1981, P.L.88, SEC.11; P.L.2-1990, SEC.11.

IC 8-14-2-5

Sec. 5. Money from the local road and street account shall be used exclusively by the cities, towns, and counties for:

(1) engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;

(2) the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects;

(3) any local costs required to undertake a recreational or reservoir road project under IC 8-23-5; or

(4) the purchase, rental, or repair of highway equipment.

(Formerly: Acts 1969, c.392, s.5; Acts 1971, P.L.98, SEC.6; Acts 1973, P.L.71, SEC.4; Acts 1974, P.L.33, SEC.2; Acts 1975, P.L.91, SEC.1.) As amended by Acts 1978, P.L.58, SEC.6; Acts 1981, P.L.41, SEC.51; P.L.18-1990, SEC.111; P.L.76-1990, SEC.1.

IC 8-14-2-7

Sec. 7. An included town under IC 36-3-1-7 may transfer surplus allocated monies to the town general fund from the local road and street account if those monies have not been allocated or expended within the previous twenty-four (24) months.

As added by P.L.67-1984, SEC.3.

IC 8-14-8-1

Sec. 1. The intent of this chapter is to create a method of providing financial assistance to counties, cities, and towns (referred to as "units" in this chapter) which have serious road and street deficiencies. This chapter has the purpose of enhancing public safety and ensuring the free flow of commerce.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.114-1983, SEC.1.

IC 8-14-8-2

Sec. 2. There is established a distressed road fund which is to be administered by the Indiana department of transportation. The distressed road fund is a non-budgetary, non-reverting fund.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.18-1990, SEC.113.

IC 8-14-8-3

Sec. 3. For purposes of this chapter, "qualified county" means a county having a population of:

(1) more than forty-four thousand (44,000) but less than forty-five thousand (45,000);

(2) more than thirty-six thousand (36,000) but less than thirty-six thousand seven hundred (36,700);

(3) more than thirty-one thousand five hundred (31,500) but less than thirty-two thousand (32,000);

(4) more than twenty-seven thousand five hundred (27,500) but less than twenty-seven thousand six hundred (27,600);

(5) more than twenty-five thousand nine hundred fifty (25,950) but less than twenty-six thousand (26,000);

(6) more than nineteen thousand (19,000) but less than nineteen thousand three hundred (19,300);

(7) more than nineteen thousand three hundred (19,300) but less than nineteen thousand five hundred (19,500);

(8) more than eleven thousand (11,000) but less than twelve thousand six hundred (12,600);

(9) more than ten thousand (10,000) but less than eleven thousand (11,000); or

(10) more than nine thousand five hundred (9,500) but less than ten thousand (10,000).

As added by Acts 1981, P.L.88, SEC.12. Amended by Acts 1982, P.L.1, SEC.26; P.L.12-1992, SEC.64.

IC 8-14-8-4

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Sec. 4. (a) A qualified county which:

(1) has adopted the county motor vehicle excise surtax under IC 6-3.5-4 and the county wheel tax under IC 6-3.5-5;

(2) is imposing the county motor vehicle excise surtax at:

(A) the maximum allowable rate, if the qualified county sets a county motor vehicle excise surtax rate under IC 6-3.5-4-2(a)(1); or

(B) an amount of not less than twenty dollars (\$20), if the qualified county sets the county motor vehicle excise surtax at a specific amount under IC 6-3.5-4-2(a)(2); and

(3) has not issued bonds under IC 8-14-9; may apply to the Indiana department of transportation for a loan from the distressed road fund. At the time of the application, the county shall notify the state board of tax commissioners that it has made the application.

(b) The application must include, at a minimum:

(1) a map depicting all roads and streets in the system of the applicant; and

(2) a copy of that county's proposed program of work covering the current and the immediately following calendar year.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.18-1990, SEC.114; P.L.255-1996, SEC.6.

IC 8-14-8-5

Sec. 5. (a) In evaluating each applicant's needs for a loan from the distressed road fund, the Indiana department of transportation shall use criteria that are consistent with good engineering practices. The criteria used must include, at a minimum:

(1) traffic counts and projected traffic;

(2) areas served;

(3) surface material and conditions;

(4) base material and depth;

(5) drainage, including culverts;

(6) width of roadway and right-of-way;

(7) soils upon which the road is placed;

(8) topography; and

(9) seasonal weather conditions and the effect on road repair and maintenance.

(b) In addition to the criteria listed in subsection (a), the department shall consider the minimum transportation needs of all areas regardless of population or vehicle registration, and the report filed with the department by the state board of tax commissioners under section 6 of this chapter.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.18-1990, SEC.115.

IC 8-14-8-6

Sec. 6. Within thirty (30) days of the date of application for a loan by a qualified county, the state board of tax commissioners shall submit to the Indiana department of transportation a financial report which shall include the following:

(1) The amount of money available to the county for road construction and maintenance.

(2) An analysis of the use, during the five (5) years immediately preceding the date of the loan application, of all highway money the county has received.

(3) Any other information required by the Indiana department of transportation for the processing of loan applications.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.114-1983, SEC.2; P.L.18-1990, SEC.116.

IC 8-14-8-7

Sec. 7. (a) The Indiana department of transportation shall notify a qualified county that makes a loan application of the department's approval or disapproval of the application within sixty (60) days of the date of application. The decision made by the department to approve or disapprove a loan application is final.

(b) The Indiana department of transportation and each qualified county for which a loan has been approved under this chapter shall enter into a loan agreement which shall specify, as a minimum, the purposes for which the loan is to be used and the terms of repayment of the loan. The terms must be consistent with subsection (c).

(c) The maximum term of repayment of a loan made under this section is ten (10) years. A loan that is repaid within the term of repayment specified in the loan agreement is not subject to interest. If a loan is not fully repaid within the term of repayment, the balance that remains unpaid at the end of the term of repayment is subject to interest at the rate of twelve percent (12%) per year.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.114-1983, SEC.3; P.L.18-1990, SEC.117.

IC 8-14-8-8

Sec. 8. All amounts received by the Indiana department of transportation from a county as repayment of a loan made under this chapter, or as payment of interest on a loan made under this chapter, shall be deposited in the distressed road fund.

As added by Acts 1981, P.L.88, SEC.12. Amended by P.L.18-1990, SEC.118.

IC 8-14-8-9

Sec. 9. Notwithstanding any other law, expenditure made from the distressed roads fund are not subject to the provisions of the Geometric Design Guide for Local Roads and Streets.

As added by Acts 1982, P.L.79, SEC.2.

IC 8-14-8-10

Sec. 10. The Indiana department of transportation shall make loans from the distressed road fund:

(1) to any qualified county under the terms of this chapter; or

(2) to any unit eligible to receive a distribution from the motor vehicle highway account (IC 8-14-1) under terms of section 11 of this chapter.

As added by P.L.114-1983, SEC.4. Amended by P.L.18-1990, SEC.119.

IC 8-14-8-11

Sec. 11. (a) A unit must make application for the loan to the Indiana department of transportation. The application must include, as a minimum:

(1) a map depicting all roads and streets in the system of the applicant; and

(2) a copy of that unit's proposed program of work covering the current and the immediately following calendar year.

(b) The Indiana department of transportation shall notify a unit that makes a loan application of the department's approval or disapproval of the application within sixty (60) days of the date of application. The decision made by the department to approve or disapprove is final.

(c) The loan is not subject to the payment of interest or penalty if repaid within two (2) years.

(d) The unit and the Indiana department of transportation shall enter into a written agreement stating the terms of the loan. The agreement must include a provision that the unit directs the auditor of state to withhold distributions from its allocations from the motor vehicle highway account if the loan is not repaid within two (2) years.

(e) Money from a loan made under this section may be used only for the purpose of matching federal aid highway funds.

As added by P.L.114-1983, SEC.5. Amended by P.L.18-1990, SEC.120.

IC 8-14-8-12

Sec. 12. Funds in the distressed road fund may be appropriated to the Indiana department of transportation to maintain a working balance in accounts established primarily to facilitate the matching of federal and local money for highway projects.

As added by P.L.113-1983, SEC.3. Amended by P.L.18-1990, SEC.121.

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IC 8-16-3-1

Sec. 1. Notwithstanding IC 8-18-8-5, all municipal corporations and county executives may provide a cumulative bridge fund to provide funds for the cost of construction, maintenance, and repair of bridges, approaches, and grade separations. However, in those counties in which a cumulative bridge fund has been established, the county executive is responsible for providing funds for all bridges, including those in municipalities, within the counties except those bridges on the state highway system. The county executive may use this fund for making county wide bridge inspection and safety ratings of all bridges in a county not on the state highway system. The inspection and safety ratings shall meet all the criteria of the National Bridge Inspection Standards promulgated by the Federal Highway Administration, U.S. Department of Transportation and shall be supervised and approved by a competent, qualified engineer, registered in the state.

(Formerly: Acts 1951, c.299, s.1; Acts 1957, c.76, s.1; Acts 1971, P.L.101, SEC.1; Acts 1973, P.L.72, SEC.1.) As amended by Acts 1977, P.L.113, SEC.1; P.L.86-1988, SEC.18; P.L.17-1995, SEC.8.

IC 8-16-3-1.5

Sec. 1.5. As used in this chapter:

(1) "Bridge" means any structure designed to carry vehicular traffic over or under an obstacle to the normal flow of traffic and including any grade separation, culvert, or approach to a bridge.

(2) "Approach" means any part of a road or street which is required to make a bridge a viable part of a county road or city street system but which does not extend more than five hundred (500) feet from the bridge.

(3) "Construction" means both construction and reconstruction to a degree that new, supplementary, or substantially improved traffic service is provided and significant geometric or structural improvements are affected.

(4) "Cost" means all expenditures required to construct, maintain, or repair a bridge, including engineering, equipment, land acquisition, materials, contracts, and bond interest.

(5) "Municipal corporation" means a city or town.

As added by Acts 1977, P.L.113, SEC.2. Amended by P.L.8-1989, SEC.54; P.L.104-1993, SEC.1.

IC 8-16-3-3

Sec. 3. (a) To provide for the cumulative bridge fund, county executives and municipal legislative bodies may levy a tax in compliance with IC 6-1.1-41 not to exceed ten cents (\$0.10) on each one hundred dollars (\$100) assessed valuation of all taxable personal and real property within the county or municipality.

(b) The tax, when collected, shall be held in a special fund to be known as the bridge fund.

(c) An appropriation in each one hundred dollars (\$100) assessed valuation of all taxable personal and real property within the county or municipality.

(b) The tax, when collected, shall be held in a special fund to be known as the bridge fund.

(c) An appropriation from the bridge fund may be made without the approval of the department of local government finance if:

(1) the county executive requests the appropriation; and

(2) the appropriation is for the purpose of constructing, maintaining, or repairing bridges, approaches, or grade separations.

(Formerly: Acts 1951, c.299, s.3; Acts 1975, P.L.92, SEC.1.) As amended by P.L.24-1986, SEC.33; P.L.86-1988, SEC.20; P.L.118-1989, SEC.1; P.L.17-1995, SEC.9; P.L.6-1997, SEC.136; P.L.90-2002, SEC.322.

IC 8-17-5-1

Sec. 1. A county executive, or any two (2) or more counties acting under IC 36-1-7 may employ a full-time county highway engineer who is responsible for supervising the design, construction, planning, traffic, and other engineering functions of the county highway department under the direction of the county executive. The engineer shall prepare all required surveys, estimates, plans, and specifications.

(Formerly: Acts 1963, c.131, s.1.) As amended by Acts 1981, P.L.11, SEC.61; P.L.86-1988, SEC.123.

IC 8-17-5-2

Sec. 2. The county highway engineer must be a registered engineer, licensed by the state board of registration for professional engineers, experienced in highway engineering and construction and a resident of Indiana during the engineer's employment.

(Formerly: Acts 1963, c.131, s.2; Acts 1971, P.L.104, SEC.1.) As amended by P.L.86-1988, SEC.124.

IC 8-17-5-4

Sec. 4. The county highway engineer is entitled to a salary fixed by the county executive and shall be allowed actual traveling and other expenses incurred in the discharge of duties. The salary and expenses shall be

paid out of county general funds, the county distribution of motor vehicle highway account funds, or both, and the county highway engineer fund. The county executive shall provide all facilities, equipment, and personnel required by the county highway engineer in the discharge of the engineer's duties.

(Formerly: Acts 1963, c.131, s.4.) As amended by P.L.86-1988, SEC.125.

IC 8-17-5-5

Sec. 5. The county highway engineer shall work under the direction of the county executive and shall, under IC 5-4-1, give bond for the faithful performance of the engineer's duties. The county highway engineer may not enter into agreements to provide engineering services for pay to other local governmental units. However, an engineer may enter into contracts to provide engineering services for pay with the county executives of any two (2) or more counties, acting jointly. The county highway engineer may perform, at the direction of the executive, highway engineering work for municipalities within the county.

(Formerly: Acts 1963, c.131, s.5.) As amended by Acts 1981, P.L.47, SEC.11; P.L.86-1988, SEC.126.

IC 8-17-5-6

Sec. 6. The county highway engineer shall, subject to the policies of the county executive, perform the following functions:

(1) Prepare and publish a county-wide inventory and classification of the county highway system so that the total county federal aid secondary system is included in the county primary or arterial system of roads.

(2) Prepare and keep a perpetual inventory of all bridges and culverts serving the county highway system. The inventory must show the location, dimensions, condition, and the year of construction for all bridges and major culverts.

(3) Prepare and publish standards of design, construction, and maintenance of the county arterial, feeder, and local roads that make the best and most economical use of local road materials.

(4) Prepare a long-range county-wide program of road and bridge construction and improvements, with the proposed projects arranged in order of priority. The program of proposed projects must cover a period of at least four (4) years.

(5) Investigate requests and petitions for road or bridge improvements that are received either by the county executive or at public hearings, and make recommendations to the county executive.

(6) Prepare surveys, designs, plans, and specifications for all county road and bridge construction projects, prepare contracts, and advertise for bids.

(7) Make construction and materials inspection of all county road and bridge construction projects, inform the executive of the status of construction work, and certify completed construction projects.

(8) Develop a county-wide program of traffic safety that provides for traffic control signs, signals, and speed limits, warning protection at railroad crossings, load limits, and detour routings.

(9) Inspect and approve the construction of subdivision streets that are to be taken into the county highway system, and recommend appropriate action to the executive when roads and streets in subdivisions are being taken into the county highway system.

(10) Prepare engineering estimates and make recommendations to the executive concerning the materials and equipment needed in the annual budgeting of both construction and maintenance funds.

(Formerly: Acts 1963, c.131, s.6.) As amended by P.L.86-1988, SEC.127.

IC 8-17-5-7

Sec. 7. County highway engineers employed under this chapter shall perform the duties of the office of county highway supervisor relating to roads and bridges.

(Formerly: Acts 1963, c.131, s.7.) As amended by P.L.66-1984, SEC.99; P.L.86-1988, SEC.128.

IC 8-17-5-8

Sec. 8. There is annually appropriated from the counties' share of the April distribution of the motor vehicle highway account, nine hundred twenty thousand dollars (\$920,000) to be held by the auditor of state in a special account known as the county highway engineer fund. The fund must be used exclusively in assisting the counties in the employment of a full-time county highway engineer.

(Formerly: Acts 1963, c.131, s.8.) As amended by Acts 1980, P.L.77, SEC.1; P.L.86-1988, SEC.129.

IC 8-17-5-9

Sec. 9. The auditor of counties that employ a full-time county highway engineer shall annually certify that employment to the auditor of state. The certification must show the name and address of the county highway engineer and the serial number of the engineer's certificate of registration issued by the state board of registration for professional engineers.

(Formerly: Acts 1963, c.131, s.9.) As amended by P.L.66-1984, SEC.100; P.L.86-1988, SEC.130; P.L.23-1991, SEC.3.

IC 8-17-5-10

Sec. 10. Upon receipt of the annual certification from the county auditor, the auditor of state shall distribute from the county highway engineer fund to each county

a grant-in-aid subsidy of twenty thousand dollars (\$20,000) that is to be applied toward the engineer's annual salary. If the county highway engineer is employed by two (2) counties acting jointly, the amount distributed to each county is ten thousand dollars (\$10,000).

(Formerly: Acts 1963, c.131, s.10; Acts 1971, P.L.104, SEC.2.) As amended by Acts 1980, P.L.77, SEC.2; P.L.86-1988, SEC.131.

IC 8-17-5-11.1

Sec. 11.1. Any balance in the county highway engineers' fund at the end of each calendar year shall be returned to the counties' share of the motor vehicle highway account to be distributed in January of the following year.

As added by Acts 1981, P.L.41, SEC.58.

IC 8-17-5-12

Sec. 12. This chapter shall not be construed as abolishing the office or employment of county highway supervisors; provided, that the respective boards of county commissioners may provide for the county highway engineer to serve also as the county highway supervisor.

(Formerly: Acts 1963, c.131, s.12.) As amended by P.L.66-1984, SEC.101.

IC 8-17-5-13

Sec. 13. (a) This section applies to each county that employs a full-time county highway engineer under this chapter.

(b) A county engineering department may be established by ordinance.

(c) The county highway engineer shall, under the direction of the county executive, supervise the work of the department. The department may be organized into divisions. The divisions may perform county engineering services approved by the county executive.

As added by Acts 1981, P.L.11, SEC.62.

IC 8-18-8-5 Payment of County Highway Maintenance Expenses

(a) Except as provided in subsection (c), all expenses incurred in the maintenance of county highways shall be paid out of funds from the gasoline tax, special fuel tax, and the motor vehicle registration fees that are paid to the counties by the state, and from funds derived from the:

- (1) county motor vehicle excise surtax;
- (2) county wheel tax;
- (3) county adjusted gross income tax;
- (4) county option income tax;
- (5) riverboat admission tax (IC 4-33-12); or

(6) riverboat wagering tax (IC 4-33-13).

(b) Except as provided in subsection (c), no ad valorem property tax may be levied by any county for the maintenance of county highways, except in an emergency and by unanimous vote of the county fiscal body.

(c) The county fiscal body may appropriate money from the county general fund to the county highway department to pay for employees' personal services.

(Formerly: Acts 1932(ss), c.16, s.5.) As amended by P.L.66-1984, SEC.111; P.L.99-1985, SEC.1; P.L.86-1988, SEC.157; P.L.76-1990, SEC.2; P.L.90-1997, SEC.1.

IC 8-18-21

IC 8-18-21-1

Sec. 1. This chapter applies to all toll road authorities established under IC 8-18-20.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-2

Sec. 2. All necessary preliminary expenses that must be paid by the board of directors of a toll road authority before the issuance and delivery of bonds or the negotiation of a loan under this chapter, including expenses incurred in:

- (1) making surveys;
- (2) estimating costs and receipts;
- (3) employing engineers or other employees;
- (4) giving notices; and
- (5) taking options;

may be paid out of money provided by the county and county seat, or either of them, from money on hand or derived from taxes levied for that purpose. The fund or funds from which the payments are made shall be fully reimbursed by the board out of the first proceeds of the sale of bonds or the loan negotiated by the authority before any other disbursements are made from those proceeds. The amount advanced to pay preliminary expenses under this section is a first charge against the proceeds resulting from the sale of the bonds or the negotiation of the loan until that amount has been repaid.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-3

Sec. 3. Except as provided in section 4 of this chapter, the board of directors of a toll road authority, acting in the name of the authority, may:

(1) finance, construct, reconstruct, operate, maintain, and manage any toll road project acquired or financed under this chapter;

(2) sue, be sued, plead, and be impleaded, but all actions against the authority must be brought in the circuit court for the county in which the authority is located;

(3) condemn, appropriate, purchase, and hold any real or personal property needed or considered useful in connection with a toll road facility;

(4) acquire real or personal property by gift, devise, or bequest and hold, use, or dispose of that property for the purposes authorized by this chapter;

(5) enter upon any lots or lands for the purpose of surveying or examining them to determine the location of a toll road facility;

(6) collect all money that is due on account of the operation, maintenance, or management of, or otherwise related to, a toll road facility, and expend that money for proper purposes;

(7) employ the managers, superintendents, architects, engineers, attorneys, auditors, clerks, foremen, custodians, and other employees necessary for the proper operation of a toll road facility and fix the compensation of those employees, but a contract of employment may not be made for a period of more than four (4) years although it may be extended or renewed from time to time;

(8) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter; and

(9) provide coverage for its employees under IC 22-3 and IC 22-4.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-4

Sec. 4. The toll road authority in a county having a consolidated city may not construct or finance unless that action is first approved by:

- (1) the city-county legislative body; and
- (2) the legislative body of the unit involved.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-5

Sec. 5. (a) For the purpose of obtaining money to pay the cost of:

- (1) constructing toll road facilities;
 - (2) acquiring land;
 - (3) repaying any advances for preliminary expenses made to the authority by an eligible entity; or
 - (4) refinancing any loan made under this chapter;
- the board of directors of a toll road authority may issue revenue bonds of the authority.

(b) The bonds are payable solely from the income and revenues of the toll road facilities for which the bonds were issued.

As added by P.L.386-1987(ss), SEC.21. Amended by P.L.3-1990, SEC.32.

IC 8-18-21-6

Sec. 6. The revenue bonds must be authorized by resolution of the board. The bonds:

(1) bear interest payable semiannually; and

(2) mature serially, either annually or semiannually, at times determined by the resolution authorizing the bonds.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-7

Sec. 7. (a) The revenue bonds may, and all bonds maturing after ten (10) years from date of issuance shall, be made redeemable before maturity at the option of the board of directors of the toll road authority. Such a redemption must be at the par value of the bonds, together with the premiums and under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(b) The principal of and interest on the bonds may be made payable in any lawful medium.

(c) The resolution authorizing the issuance of the bonds must:

(1) determine the form of the bonds, including the interest coupons to be attached to them;

(2) fix the denomination or denominations of the bonds; and

(3) fix the place or places of payment of the principal and interest of the bonds, which must be at a state or national bank or trust company within Indiana and may also be at one (1) or more state or national banks or trust companies outside Indiana.

(d) The bonds are negotiable instruments under IC 26-1.

(e) The resolution authorizing the issuance of the bonds may provide for the registration of any of the bonds in the name of the owner as to principal alone.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-8

Sec. 8. (a) The revenue bonds shall be executed by the president of the board of directors, the corporate seal of the authority shall be affixed to the bonds and attested by the secretary of the board, and the interest coupons attached to the bonds shall be executed by placing the facsimile signature of the treasurer of the board on them.

(b) Notice of the sale of the bonds shall be published in accordance with IC 5-3-1.

(c) The board of directors shall sell the bonds at public sale, for not less than their par value. The board shall award the bonds to the highest bidder, as determined by computing the total interest on the bonds from the date of sale to the dates of maturity and deducting from that amount the premium bid, if any. Any premium received from the sale of the bonds shall be used solely for the payment of principal and interest on the bonds. If the bonds are not sold on the date fixed for the sale, then the sale may be continued from day to day until a satisfactory bid has been received.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-9

Sec. 9. The board of directors may issue temporary bonds, with or without coupons. These bonds, which must be issued in the manner prescribed by this chapter, may be exchanged for the bonds that are subsequently issued.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-10

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Sec. 10. (a) In lieu of authorizing and selling bonds under this chapter, the board of directors of a toll road authority may adopt a resolution authorizing the negotiation of a loan or loans for the purpose of obtaining the required money.

(b) The resolution authorizing the loan must set out:

- (1) the total amount of the loan desired;
- (2) the approximate dates on which money will be required, and the amounts of the money that will be required on those dates; and
- (3) any terms, conditions, and restrictions concerning the proposed loan or the submission of proposals that the board considers advisable.

(c) Before the consideration of proposals for such a loan, a notice shall be published in accordance with IC 5-3-1. The notice must set out:

- (1) the amount and purpose of the proposed loan;
- (2) a brief summary of other provisions of the resolution; and
- (3) the time and place where proposals will be considered.

(d) The board of directors may accept the proposal it considers most advantageous to the authority.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-11

Sec. 11. (a) The board of directors of an authority may secure bonds issued or loans made under this chapter by a trust indenture between the authority and a corporate

trustee, which may be any trust company or national or state bank within Indiana that has trust powers.

(b) The trust indenture may:

(1) mortgage all or part of the toll road facility for which the bonds are issued or loan is made;

(2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders or lenders, including covenants setting forth the duties of the authority and board concerning:

(A) the construction, operation, repair, maintenance, and insurance of the toll road facility; and

(B) the custody, safeguarding, and application of all money received or to be received by the authority on account of the toll road facility financed by the bonds or loan;

(3) set forth the rights and remedies of the bondholders or lenders and trustee; and

(4) restrict the individual right of action of bondholders or lenders.

(c) Except as otherwise provided in this chapter, the board of directors may, by resolution or in the trust indenture, specify:

(1) the officer, board, or depository to which the proceeds of the bonds or loan shall be paid; and

(2) the method of disbursing those proceeds.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-12

Sec. 12. (a) The proceeds of any bonds issued or loans made under this chapter shall first be applied to the reimbursement of all amounts advanced for preliminary expenses under this chapter. The proceeds shall then be applied solely to the payment of the costs for which the bonds are issued or the loan is negotiated, including incidental expenses and interest during construction.

(b) The bondholders, lenders, or trustees under this chapter have a lien upon the proceeds of the bonds or the loan until those proceeds are applied as prescribed by this section.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-13

Sec. 13. The annual operating budget of a toll road authority is subject to review by the county board of tax adjustment and then by the state board of tax commissioners as in the case of other political subdivisions.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-14

Sec. 14. All the property and revenues of a toll road authority are exempt from taxation for all purposes.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-15

Sec. 15. All the bonds and other securities issued by a toll road authority, including the interest on them, are exempt from taxation as provided in IC 6-8-5.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-16

Sec. 16. (a) Except as otherwise provided in this chapter, all money coming into possession of the toll road authority shall be deposited, held, and secured in accordance with the general statutes concerning the handling of public funds. The handling and expenditure of money coming into possession of the authority is subject to audit and supervision by the state board of accounts.

(b) Any employee of the toll road authority authorized to receive, disburse, or in any other way handle money or negotiable securities of the authority shall execute a bond payable to the state, with surety to consist of a surety or guaranty corporation qualified to do business in Indiana. The bond must be in an amount determined by the board of directors of the authority and must be conditioned upon the faithful performance of the employee's duties and the accounting for all money and property that may come into his hands or under his control. The cost of the bond shall be paid by the authority.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-17

Sec. 17. All contracts let by a toll road authority for the construction and equipment of a toll road facility must be let in accordance with the general statutes concerning public works.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-18

Sec. 18. The records of a toll road authority are public records.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-21-19

Sec. 19. (a) The county fiscal body and the municipal fiscal body of the county seat may by concurrent resolution dissolve a toll road authority. They may consider dissolving the toll road authority at any time, but they shall consider dissolving the toll road authority when they are presented with a petition signed by twenty percent (20%) of the registered voters residing in the county or thirty-five percent (35%) of the registered voters residing in the county seat.

(b) The concurrent resolution must provide a plan for paying any obligations, including bonds, of the toll road authority and for the disposition of the funds and property of the toll road authority.

As added by P.L.386-1987(ss), SEC.21.

IC 8-18-22

IC 8-18-22-1

Sec. 1. This chapter applies to the issuance of bonds by counties for purposes authorized by IC 8-16-3, IC 8-16-3.1, IC 8-16-5, and IC 8-17 through IC 8-20. This chapter does not apply to bonds issued under IC 8-18-21.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-2

Sec. 2. As used in this chapter, "bonds" has the meaning set forth in IC 36-1-2-2.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-3

Sec. 3. (a) Upon request of the county executive, the county fiscal body may borrow money and issue bonds in the name of the county in principal amounts and maturities as the fiscal body determines necessary to provide sufficient funds for the purposes specified in IC 8-16 through IC 8-20, including:

(1) the payment of costs of the project for which bonds are authorized, costs of issuance, or related costs of financing;

(2) the payment of interest on the bonds;

(3) the establishment of reserves to secure the bonds; and

(4) all other expenditures of the county incident to, necessary, and convenient to carry out this chapter.

(b) Before bonds may be issued under this chapter, the county fiscal body shall give notice of a public hearing to disclose the purpose for which the bond issue is proposed, the amount of the proposed issue, and other pertinent data. The county fiscal body shall publish in accordance with IC 5-3-1 a notice of the time, place, and general purpose of the hearing.

(c) The costs of more than one (1) project may be included in one (1) issue of bonds.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-4

Sec. 4. (a) The bonds must be authorized by ordinance of the fiscal body. The ordinance must provide the following with respect to the bonds:

- (1) The original date of the bonds.
 - (2) The time or times that the bonds mature.
- However, a bond may not mature more than thirty (30) years from the date it is issued.
- (3) The maximum interest rate or rates, including variations of the rates.
 - (4) The denominations.
 - (5) The form, either coupon or registered.
 - (6) The registration privileges.
 - (7) The medium of payment and the place or places of payment.

(8) The terms of redemption, including redemption before maturity.

(b) Bonds issued under this chapter must be sold under IC 5-1-11, and at a price or prices determined by the county fiscal body in the ordinance.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-5

Sec. 5. An ordinance authorizing the issuance of bonds under this chapter or trust indenture under which the bonds are issued may contain the following provisions:

- (1) Pledging revenues of the county to secure the payment of the bonds, subject to section 6 of this chapter and existing agreements with bondholders.
- (2) Setting aside reserves or sinking funds and the regulation and disposition of these funds.
- (3) Limitations on the purposes to which the proceeds from the sale of bonds may be applied.
- (4) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
- (5) The procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated and the manner in which the consent to the amendment or abrogation may be given.
- (6) Vesting in a trustee property, rights, powers, and trust as the county fiscal body determines, and limiting or abrogating the right of the bondholders to appoint a trustee or to limit the rights, powers, and duties of the trustee.
- (7) Defining acts or omissions that will constitute a default and the obligations or duties of the county fiscal body to the bondholders and providing for the rights and remedies of the bondholders in the event of default. However, the rights and remedies must not be

inconsistent with this chapter or other laws of this state.

(8) A covenant that the fiscal body will not repeal or adversely modify the taxes or sources of revenue that are pledged to secure the payment of the bonds.

(9) Any other matter that affects the security or protection of the bondholders.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-6

Sec. 6. (a) Except as provided in subsection (b), the county fiscal body may pledge revenues for the payment of principal and interest on the bonds and for other purposes under the ordinance as provided by IC 5-1-14-4, including revenues from the following sources:

- (1) The motor vehicle highway account.
- (2) The local road and street account.
- (3) The county motor vehicle excise surtax.
- (4) The county wheel tax.
- (5) The county adjusted gross income tax.
- (6) The county option income tax.
- (7) The economic development income tax.
- (8) Assessments.

(9) Any other unappropriated or unencumbered money.

(b) The county fiscal body may not pledge to levy ad valorem property taxes for these purposes, except for revenues from the following:

- (1) IC 8-16-3.
- (2) IC 8-16-3.1.

(c) If the county fiscal body has pledged revenues from the county option income tax as set forth in subsection (a), the county income tax council (as defined in IC 6-3.5-6-1) may covenant that the council will not repeal or modify the tax in a manner that would adversely affect owners of outstanding bonds issued under this chapter. The county income tax council may make the covenant by adopting an ordinance using procedures described in IC 6-3.5-6.

(d) If the county fiscal body has pledged revenues from the economic development income tax as set forth in subsection (a), the county income tax council (if the council is the body that imposed the tax) may covenant that the council will not repeal or modify the tax in a manner that would adversely affect owners of outstanding bonds issued under this chapter. The county income tax council may make the covenant by adopting an ordinance using procedures described in IC 6-3.5-6.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-7

Sec. 7. (a) The bonds may be secured by a trust indenture between the county and a bank having the power of a trust company or any trust company.

(b) The trust indenture may provide for:

(1) protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law;

(2) covenants setting forth the duties of the county fiscal body in relation to the exercise of its powers and the custody, safekeeping, and application of money related to the bond financing for which the trust indenture exists;

(3) the payment of the proceeds of the bonds and the revenue of the trustee under the trust indenture; and

(4) the method of disbursement of the proceeds of the bonds and the revenue to the trustee, with safeguards and restrictions as the county fiscal body may determine.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-8

Sec. 8. Bonds issued by the county under this chapter must be executed by the manual or facsimile signatures of the executive and attested to by the county auditor.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-9

Sec. 9. Money received from the bonds issued under this chapter shall be applied solely to the purposes for which the bonds were issued, except as provided in IC 5-1-13 and IC 5-1-14.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-10

Sec. 10. The bonds are negotiable instruments, subject only to the provisions of the bonds relating to registration.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-11

Sec. 11. Bonds issued under this chapter are exempt from taxation in Indiana under IC 6-8-5.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-12

Sec. 12. Bonds issued by the county under this chapter are exempt from registration and other requirements of IC 23 and any other securities registration laws.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-13

Sec. 13. The general assembly pledges to and covenants with the owner of any bonds issued under this chapter that the general assembly will not limit or alter the ability of the county to fulfill the terms of the agreements or pledges made with bondholders or in any way impair the rights or remedies of the bondholders until the bonds and related obligations are fully met and discharged.

As added by P.L.113-1989, SEC.9.

IC 8-18-22-14

Sec. 14. IC 6-1.1-20 does not apply to the issuance of bonds under this chapter.

As added by P.L.113-1989, SEC.9.

IC 8-23-3

Chapter 3. Federal Transportation Funds

IC 8-23-3-1

Sec. 1. This chapter applies to the use of federal funds allocated to Indiana as follows:

(1) From the Highway Trust Fund (23 U.S.C.).

(2) From the Aviation Trust Fund (49 U.S.C.).

(3) Through the Urban Mass Transit Administration (49 U.S.C. 1601 et seq.).

(4) Other federal grants that have a transportation component.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-2

Sec. 2. This chapter does not apply to grants described in section 1 of this chapter applied for before July 1, 1981.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-3

Sec. 3. An agency must submit to the department for the department's approval an application for a grant described in section 1 of this chapter.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-4

Sec. 4. The department shall do the following:

(1) Review as soon as possible all applications for grants described in section 1 of this chapter.

(2) Approve or disapprove those applications.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-5

Sec. 5. An agency shall do the following:

(1) Use a grant described in section 1 of this chapter only for the purposes set out and approved by the board in the grant application.

(2) Report to the department all expenditures from a grant described in section 1 of this chapter.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-6

Sec. 6. The budget agency shall only allot funds to an agency from a grant described in section 1 of this chapter for the purposes set out and approved by the department in the grant application.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-7

Sec. 7. (a) Each political subdivision shall file with the department, at times prescribed by the department, copies of approved applications for grants described in section 1 of this chapter along with a copy of the grant approval letter.

(b) If a political subdivision does not comply with subsection (a) after the department has made reasonable attempts to reach an agreement with that political subdivision to obtain compliance, the department may order the auditor of state to withhold from that political subdivision the subdivision's allotted distribution of state motor fuel tax revenues. The auditor of state shall comply with the department's order.

(c) When compliance with subsection (a) is obtained, the auditor of state shall release all funds withheld under subsection (b) upon receipt of an order from the department.

As added by P.L.18-1990, SEC.212.

IC 8-23-3-8

Sec. 8. (a) The public mass transportation fund is established for the purpose of promoting and developing public mass transportation in Indiana. The fund shall be administered by the department.

(b) The treasurer of state may invest the money in the fund in the same manner as other public funds may be invested.

(c) Money in the fund at the end of a fiscal year does not revert to the state general fund.

(d) Money distributed from the fund in a county containing a consolidated city must be distributed to the consolidated city for promoting and developing public mass transportation and not to a public transportation corporation located within the county.

As added by P.L.18-1990, SEC.212. Amended by P.L.118-1995, SEC.1.

IC 8-23-3-9

(Repealed by P.L.2-1996, SEC.297.)

IC 8-23-3-10

Sec. 10. (a) Investigations conducted by the department to determine the reasonably anticipated future need for federal aid highways and state highways may include the following:

(1) Traffic surveys.

(2) The study of transportation facilities.

(3) Research concerning the development of the regions of Indiana and contiguous territory, including the effects of growth and changes in population and economic activity.

(4) The collection and review of data relating to factors that affect the judicious planning of the construction, improvement, and maintenance of highways.

(b) An investigation conducted under subsection (a) may interrupt and stop traffic if necessary.

(c) An investigation conducted under subsection (a) may be conducted in cooperation with counties, municipalities, metropolitan planning organizations, the United States, other states, government agencies, or other persons.

(d) The department may enter into an agreement with an entity described in subsection (c) to conduct an investigation under subsection (a).

As added by P.L.81-1991, SEC.2.

IC 8-23-9-54 State Highway Fund

(a) To provide funds for carrying out the provisions of this chapter, there is created a state highway fund from the following sources:

(1) All money in the general fund to the credit of the state highway account.

(2) All money that is received from the Department of Transportation or other federal agency and known as federal aid.

(3) All money paid into the state treasury to reimburse the state for money paid out of the state highway fund.

(4) All money provided by Indiana law for the construction, maintenance, reconstruction, repair, and control of public highways, as provided under this chapter.

(5) All money that on May 22, 1933, was to be paid into the state highway fund under contemplation of any statute in force as of May 22, 1933.

(6) All money that may at any time be appropriated from the state treasury.

(7) Any part of the state highway fund unexpended at the expiration of any fiscal year, which shall remain in the fund and be available for the succeeding years.

(8) Any money credited to the state highway fund from the motor vehicle highway account under IC 8-14-1-3(4).

(9) Any money credited to the state highway fund from the highway road and street fund under IC 8-14-2-3.

(10) Any money credited to the state highway fund under IC 6-6-4.1-5 or IC 8-16-1-17.1.

(b) All expenses incurred in carrying out this chapter shall be paid out of the state highway fund.

As added by P.L.18-1990, SEC.218.

IC 8-23-9-55

Sec. 55. Money in the state highway fund shall be used for the following:

(1) Operation of the department.

(2) Construction, reconstruction, operation, maintenance, and control of the state highways that are the responsibility of the department and of tollways that are the responsibility of the department under IC 8-15-3.

As added by P.L.18-1990, SEC.218.

IC 36-2-5

Chapter 5. Budget Procedures

IC 36-2-5-1

Sec. 1. This chapter applies to all counties not having a consolidated city.

As added by Acts 1980, P.L.212, SEC.1.

IC 36-2-5-2

Sec. 2. (a) The county fiscal body shall fix:

(1) the rate of taxation for county purposes; and

(2) the rate of taxation for other purposes whenever the rate is not fixed by statute and is required to be uniform throughout the county.

(b) The county fiscal body shall appropriate money to be paid out of the county treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law.

As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.151.

IC 36-2-5-3

Sec. 3. (a) The county fiscal body shall fix the compensation of officers, deputies, and other employees whose compensation is payable from the county general fund, county highway fund, county health fund, county park and recreation fund, aviation fund, or any other fund from which the county auditor issues warrants for compensation. This includes the power to:

(1) fix the number of officers, deputies, and other employees;

(2) describe and classify positions and services;

(3) adopt schedules of compensation; and

(4) hire or contract with persons to assist in the development of schedules of compensation.

(b) The county fiscal body shall fix the annual compensation of a county assessor who has attained a level two certification under IC 6-1.1-35.5 at an amount that is one thousand dollars (\$1,000) more than the annual compensation of an assessor who has not attained a level two certification. The county fiscal body shall fix the annual compensation of a county or township deputy assessor who has attained a level two certification under IC 6-1.1-35.5 at an amount that is five hundred dollars (\$500) more than the annual compensation of a county or township deputy assessor who has not attained a level two certification.

(c) Notwithstanding subsection (a), the board of each local health department shall prescribe the duties of all its officers and employees, recommend the number of positions, describe and classify positions and services, adopt schedules of compensation, and hire and contract with persons to assist in the development of schedules of compensation.

(d) This section does not apply to community corrections programs (as defined in IC 11-12-1-1 and IC 35-38-2.6-2).

As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.152; P.L.16-1986, SEC.77; P.L.2-1993, SEC.200; P.L.135-1993, SEC.10; P.L.198-2001, SEC.104.

IC 36-2-5-4

Sec. 4. (a) Before July 2 of each year, each officer, board, commission, and agency subject to this chapter shall file with the county auditor a statement that shows in detail the positions for which compensation will be requested in the annual budget for the next year and the amount or rate of compensation proposed for each full-time or part-time position. The statement must be on a form prescribed by the state board of accounts.

(b) The county auditor shall present the statements submitted under subsection (a) to the county executive at its July meeting. The county executive shall review the statements and make its recommendations on them.

Before August 20 the county executive shall present the statements and recommendations to the county fiscal body.

As added by Acts 1980, P.L.212, SEC.1.

IC 36-2-5-5

Sec. 5. (a) Before the Thursday after the first Monday in August of each year, each county officer and township assessor shall prepare an itemized estimate of the amount of money required for his office for the next calendar year. Each budget estimate under this section must include:

- (1) the compensation of the officer;
- (2) the expense of employing deputies;
- (3) the expense of office supplies, itemized by the quantity and probable cost of each kind of supplies;
- (4) the expense of litigation for the office; and
- (5) other expenses of the office, specifically itemized, that are payable out of the county treasury.

(b) If all or part of the expenses of a county office may be paid out of the county treasury, but only under an order of the county executive to that effect, the expenses of the office shall be included in the officer's budget estimate and may not be included in the county executive's budget estimate.

As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.222-1997, SEC.1.

IC 36-2-5-6

Sec. 6. (a) Before the Thursday after the first Monday in August of each year, each clerk of a court in the county shall prepare a separate estimate of the amount of money required for each court of which he is clerk for the next calendar year. If a court has two (2) or more judges who preside in separate rooms or over separate divisions, the clerk shall prepare a separate itemized estimate for court expenses in each room or division. Each clerk's budget estimate must include:

- (1) the part of the judge's compensation that is, by statute, payable out of the county treasury;
- (2) the compensation of the probate commissioner;
- (3) the expense of employing bailiffs;
- (4) the amount of jury fees;
- (5) the amount of witness fees that are, by law, payable out of the county treasury;
- (6) the expense of employing special judges; and
- (7) other expenses of the court, specifically itemized.

(b) In addition to the estimates required by subsection (a), the clerk of the circuit court shall prepare an estimate of the amount of money that is, under law, taxable against the county for the expenses of cases tried in other counties on changes of venue.

(c) The estimate of the amount of money required for a court or division of a court is subject to modification and approval by the judge of the court or division and shall be submitted to him for that purpose before being presented to the county auditor.

As added by Acts 1980, P.L.212, SEC.1.

IC 36-2-5-7

Sec. 7. Before the Thursday after the first Monday in August of each year, the county executive shall prepare an itemized estimate of all money to be drawn by the members of the executive and all expenditures to be made by the executive or under its orders during the next calendar year. Each executive's budget estimate must include:

- (1) the expense of construction, repairs, supplies, employees, and agents, and other expenses at each building or institution maintained in whole or in part by money paid out of the county treasury;
- (2) the expense of constructing and repairing bridges, itemized by the location of and amount for each bridge;
- (3) the compensation of the attorney representing the county;
- (4) the compensation of attorneys for indigents;
- (5) the expenses of the county board of health;
- (6) the expense of repairing county roads, itemized by the location of and amount for each repair project;
- (7) the estimated number of precincts in the county and the amount required for election expenses, including compensation of election commissioners, inspectors, judges, clerks, and sheriffs, rent, meals, hauling and repair of voting booths and machines, advertising, printing, stationery, furniture, and supplies;
- (8) the amount of principal and interest due on bonds and loans, itemized for each loan and bond issue;
- (9) the amount required to pay judgments, settlements, and court costs;
- (10) the expense of supporting inmates of benevolent or penal institutions;
- (11) the expense of publishing delinquent tax lists;
- (12) the amount of compensation of county employees that is payable out of the county treasury;
- (13) the expenses of the county property tax assessment board of appeals; and
- (14) other expenditures to be made by the executive or under its orders, specifically itemized.

As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.137-1989, SEC.14; P.L.6-1997, SEC.204.

IC 36-2-5-8

Sec. 8. A certificate, verified by the officer preparing it and stating that in his opinion the amount fixed in each item will be required for the purpose indicated, must be attached to each budget estimate prepared under this chapter.

As added by Acts 1980, P.L.212, SEC.1.

IC 36-2-5-9

Sec. 9. Before the Thursday after the first Monday in August of each year, persons preparing budget estimates under this chapter shall present them to the county auditor, who shall file them in his office and make them available for inspection by county taxpayers. The auditor shall also comply with the notice requirements of IC 6-1.1-17-3.

As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.45, SEC.9.

IC 36-2-5-10

Sec. 10. Before the county fiscal body's annual meeting under IC 36-2-3-7(b)(2), the county auditor shall prepare:

- (1) an ordinance fixing the rate of taxation for taxes to be collected in the next calendar year; and
- (2) an ordinance making appropriations by items for the next calendar year for the various purposes for which budget estimates are required.

As added by Acts 1980, P.L.212, SEC.1.

IC 36-2-5-11

Sec. 11. (a) At the county fiscal body's annual meeting under IC 36-2-3-7(b)(2), the county auditor shall present the budget estimates filed with him under section 9 of this chapter and the ordinances prepared by him under section 10 of this chapter. He may also present his recommendations concerning the estimates.

(b) At its annual meeting under IC 36-2-3-7(b)(2), the county fiscal body shall fix the county tax rate and make appropriations for the next calendar year by:

- (1) adopting the ordinances presented by the county auditor;
- (2) amending the ordinances presented by the county auditor; or
- (3) substituting other ordinances for those presented by the county auditor.

Each ordinance must be read on at least two (2) separate days before its final adoption. The fiscal body may require the preparer of an estimate that is not sufficiently itemized to itemize it in more detail. At least a three-fourths (3/4) vote (as described in IC 36-1-8-14) of the fiscal body is required to make an appropriation for an item not contained in an estimate or for a greater amount than that named in an item of an estimate.

(c) At its annual meeting under IC 36-2-3-7(b)(2), the county fiscal body shall consider the statements and recommendations submitted by the county executive under section 4(b) of this chapter and shall then adopt an ordinance, separate from those adopted under subsection (b), fixing:

(1) the compensation of all officers, deputies and other employees subject to this chapter; and

(2) the number of deputies and other employees for each office, department, commission, or agency, except part-time and hourly rated employees, whose employment shall be limited only by the amount of funds appropriated to pay their compensation.

As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.125-2001, SEC.2.

IC 36-2-5-12

Sec. 12. (a) If, after the adjournment of its annual meeting under IC 36-2-3-7(b)(2), the county fiscal body finds that an emergency requiring additional appropriations exists, it may make additional appropriations at a special meeting. Estimates of the necessary amount of additional appropriations must be prepared and presented in an ordinance as prescribed by this chapter.

(b) Except as provided in subsection (c), an additional appropriation under this section must be passed by at least a majority vote of all elected members of the county fiscal body.

(c) Notwithstanding IC 36-2-4-5, a county fiscal body may adopt an ordinance that requires an additional appropriation under this section to be passed by an affirmative vote of a certain number of members greater than a majority of all elected members of the county fiscal body.

(d) An ordinance adopted under subsection (c) requiring an affirmative vote of a certain number of members greater than a majority of all elected members of the fiscal body to pass an additional appropriation must be adopted or repealed by a majority vote of all elected members of the county fiscal body.

As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1980, P.L.125, SEC.20; P.L.125-2001, SEC.3.

IC 36-2-5-13

Sec. 13. The compensation of an elected county officer may not be changed in the year for which it is fixed. The compensation of other county officers, deputies, and employees or the number of each may be changed at any time on:

(1) the application of the affected officer, department, commission or agency; and

(2) a two-thirds (2/3) vote of the county fiscal body.

As added by Acts 1980, P.L.212, SEC.1.

IC 36-2-5-14

Sec. 14. (a) This chapter does not affect the salaries of judges, officers of courts, prosecuting attorneys, and deputy prosecuting attorneys whose minimum salaries are fixed by statute, but the county fiscal body may make appropriations to pay them more than the minimums fixed by statute subject to subsection (b).

(b) Beginning July 1, 1995, an appropriation made under this section may not exceed five thousand dollars (\$5,000) for each judge or full-time prosecuting attorney in any calendar year.

As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.279-1995, SEC.21; P.L.280-1995, SEC.23; P.L.2-1996, SEC.289.

IC 36-4-7

Chapter 7. City Budget Procedures and Compensation of Officers and Employees

IC 36-4-7-1

Sec. 1. This chapter applies to second and third class cities.

As added by Acts 1980, P.L.212, SEC.3. Amended by Acts 1981, P.L.44, SEC.45.

IC 36-4-7-2

Sec. 2. (a) As used in this section, "compensation" means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money is paid.

(b) The city legislative body shall, by ordinance, fix the annual compensation of all elected city officers. The ordinance must be published under IC 5-3-1, with the first publication at least thirty (30) days before final passage by the legislative body.

(c) The compensation of an elected city officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

As added by Acts 1980, P.L.212, SEC.3. Amended by Acts 1981, P.L.17, SEC.21; P.L.15-1993, SEC.3.

IC 36-4-7-3

Sec. 3. (a) This section does not apply to compensation paid by a city to members of its police and fire departments.

(b) Subject to the approval of the city legislative body, the city executive shall fix the compensation of each appointive officer, deputy, and other employee of the city. The legislative body may reduce but may not increase any compensation fixed by the executive. Compensation must be fixed under this section before:

(1) September 20 for a third class city; and

(2) September 30 for a second class city; of each year for the ensuing budget year.

(c) Compensation fixed under this section may not be increased during the budget year for which it is fixed, but may be reduced by the executive.

(d) Notwithstanding subsection (b), the city clerk may, with the approval of the legislative body, fix the salaries of deputies and employees appointed under IC 36-4-11-4.

As added by Acts 1980, P.L.212, SEC.3. Amended by P.L.44-1991, SEC.5; P.L.35-1999, SEC.5; P.L.89-2001, SEC.7.

IC 36-4-7-4

YAMD.1980

Sec. 4. (a) Subject to the approval of the city legislative body, the city executive may provide that city officers and employees receive additional compensation for services that:

(1) are performed for the city;

(2) are not governmental in nature; and

(3) are connected with the operation of a municipally owned utility or function.

(b) Subject to the approval of the executive and legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-7-5

Sec. 5. Salaries of city officers and employees shall be scheduled as provided in the budget classification prescribed by the state board of accounts.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-7-6

Sec. 6. Before the publication of notice of budget estimates required by IC 6-1.1-17-3, each city shall formulate a budget estimate for the ensuing budget year in the following manner:

(1) Each department head shall prepare for his department an estimate of the amount of money required for the ensuing budget year, stating in detail each category and item of expenditure he anticipates.

(2) The city fiscal officer shall prepare an itemized estimate of revenues available for the ensuing budget year, and shall prepare an itemized estimate of expenditures for other purposes above the money proposed to be used by the departments.

(3) The city executive shall meet with the department heads and the fiscal officer to review and revise their various estimates.

(4) After the executive's review and revision, the fiscal officer shall prepare for the executive a report of the estimated department budgets, miscellaneous expenses, and revenues necessary or available to finance the estimates.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-7-7

Sec. 7. (a) The fiscal officer shall present the report of budget estimates to the city legislative body under IC 6-1.1-17. After reviewing the report, the legislative body shall prepare an ordinance fixing the rate of taxation for the ensuing budget year and an ordinance making appropriations for the estimated department budgets and other city purposes during the ensuing budget year. The legislative body, in the appropriation ordinance, may reduce any estimated item from the figure submitted in the report of the fiscal officer, but it may increase an item only if the executive recommends an increase. The legislative body shall promptly act on the appropriation ordinance.

(b) In preparing the ordinances described in subsection (a) the legislative body shall make an allowance for the cost of fire protection to annexed territory described in IC 36-4-3-7(d), for the year fire protection is first offered to that territory.

As added by Acts 1980, P.L.212, SEC.3. Amended by P.L.341-1987, SEC.2; P.L.5-1989, SEC.104.

IC 36-4-7-8

Sec. 8. After the passage of the appropriation ordinance, the city legislative body may, on the recommendation of the city executive, make further or additional appropriations by ordinance, unless their result is to increase the tax levy set under IC 6-1.1-17. The legislative body may, by ordinance, decrease any appropriation. The executive may, by executive order, decrease the appropriation made for any executive department.

As added by Acts 1980, P.L.212, SEC.3. Amended by Acts 1980, P.L.73, SEC.10.

IC 36-4-7-9

Sec. 9. An appropriation ordinance must specify, by items, the amount of each appropriation and the department for which it is made.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-7-10

Sec. 10. The department budgets prepared under section 6 of this chapter must include the compensation of department heads and must be submitted to the city legislative body under section 7 of this chapter.

As added by Acts 1980, P.L.212, SEC.3. Amended by Acts 1982, P.L.33, SEC.25.

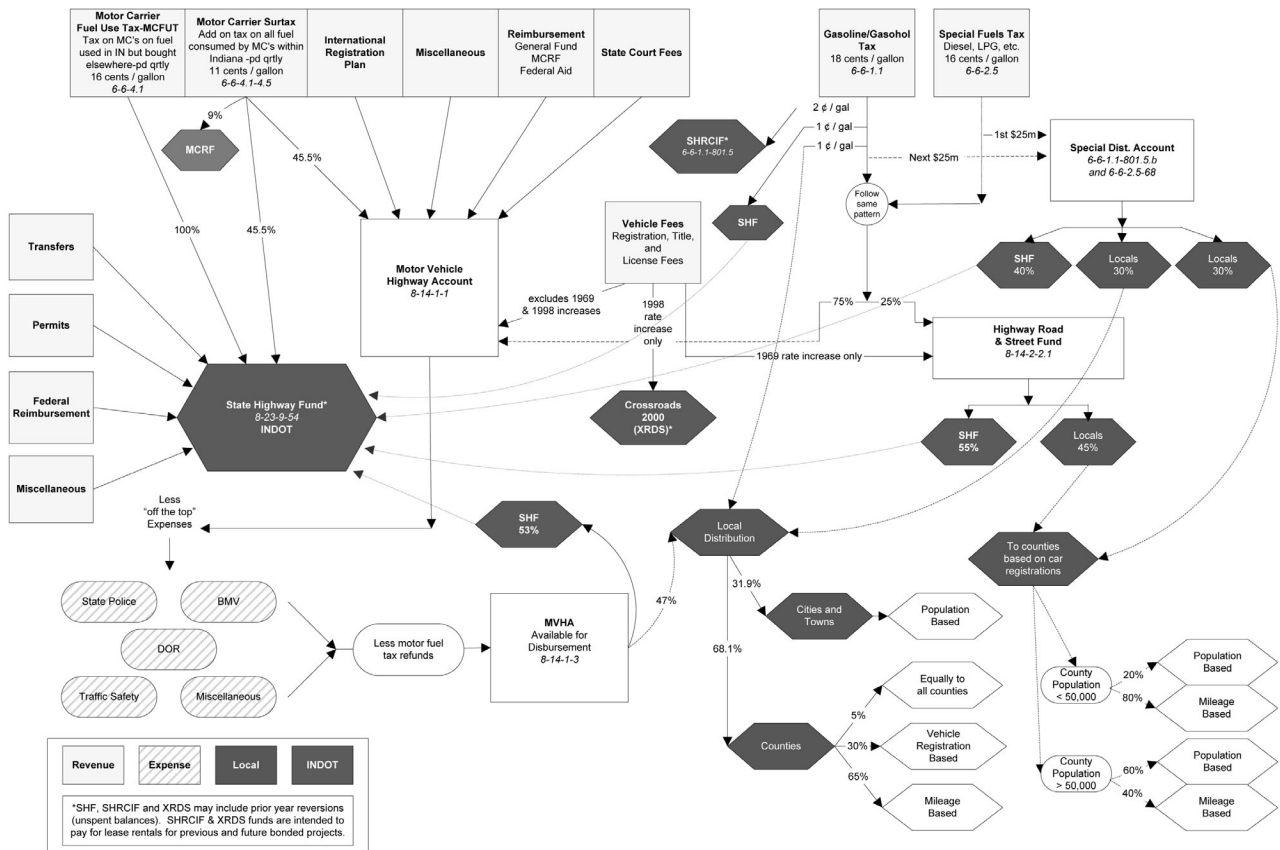
IC 36-4-7-11

Sec. 11. If the city legislative body does not pass the ordinances required by section 7 of this chapter on or before the first Monday in September of any year, the most recent annual appropriations and annual tax levy are continued for the ensuing budget year.

As added by Acts 1980, P.L.212, SEC.3.

Indiana Transportation Funding

Effective January 1, 2003



Prepared by INDOT Budget Fiscal Management Division. Federal funds and local option taxes not included.

Figure 4-7. **INDOT Funding Chart.**

This graphic ends the chapter as a summary of the state funding process. It depicts the sources and flows of transportation funds in the state. This chart is released by the INDOT Budget Fiscal Management Division each year.



Transportation Planning

Introduction

Transportation planning encompasses all activities involving analysis and evaluation of past, present, and prospective problems associated with the demand for movement of people, goods, and information at local, national, or even international levels. It further involves identifying solutions in the context of current and future economic, social, environmental, land use, and technical developments and takes into account the concerns of the society it serves. "The transportation system is the framework upon which the city is built" (ICMA and APA 1979, 214). This system must be part of the overall plan for the community to ensure orderly growth and effective use of scarce resources.

Planning for transportation needs provides a blueprint for future growth and ideally protects the rights of both individual citizens and the community as a whole. It represents a community's view of both its future appearance and its character and aids decision makers in designing future patterns of development. Planning is a continuous process permeating every aspect of transportation.

Effective long-range planning depends upon a well-conceived estimate of the current and anticipated transportation needs. It requires planners to take a workable view of the community's transportation goals in relation to what is possible. This chapter focuses on the fundamentals of such planning, from considering the many levels of responsibility for plan implementation to performing a general review of major steps in the planning process. In addition, the chapter discusses other pertinent topics, such as access management techniques, gives transportation planning definitions to clarify the use of terms, and reviews portions of the statute where applicable.

This busy intersection is instructive as it leads us into the area of transportation planning. What will be the extent of traffic flow in five, ten or fifteen years? What projects will be required to maintain traffic and reduce congestion and delay? Transportation planning is the job of a variety of planning agencies—small, medium, or large. All face similar issues, but for small and medium-size communities, the solutions may be different than those of larger urban areas. One way or another, all must look ahead as far as possible—up to 25 years, to plan for the future.

Transportation Planning Definitions

Transportation planning definitions are codified in IC 36-7-1 and IC 36-7-4.

IC-36-7-1

Explanations of definitions given in Section IC-36-7-1 are detailed below.

IC 36-7-1-1

Sec. 1. The definitions in IC 36-1-2 and in this chapter apply throughout this article.

As added by Acts 1980, P.L.211, SEC.2. Amended by Acts 1981, P.L.309, SEC.1.

IC 36-7-1-2

Sec. 2. "Advisory plan commission" means a municipal plan commission, a county plan commission, or a metropolitan plan commission.

As added by Acts 1981, P.L.309, SEC.2.

IC 36-7-1-3

Sec. 3. "Blighted area" means an area in which normal development and occupancy are undesirable or impossible because of

- (1) lack of development;
- (2) cessation of growth;
- (3) deterioration of improvements;
- (4) character of occupancy;
- (5) age;
- (6) obsolescence;
- (7) substandard buildings; or
- (8) other factors that impair values or prevent normal use or development of property.

As added by Acts 1981, P.L.309, SEC.3.

IC 36-7-1-4

Sec. 4. "Board of zoning appeals," unless preceded by a qualifying adjective, refers to a board of zoning

appeals under either the advisory planning law, the area planning law, or the metropolitan development law.

As added by Acts 1981, P.L.309, SEC.4.

IC 36-7-1-5

Sec. 5. "Comprehensive plan" means a composite of all materials prepared and approved under the 500 series of IC 36-7-4 or under prior law. It includes a master plan adopted under any prior law. The comprehensive plan is separate from any zoning ordinance as defined in Section 22 of this chapter.

As added by Acts 1981, P.L.309, SEC.5. Amended by Acts 1981, P.L.310, SEC.1; P.L.192-1984, SEC.2; P.L.335-1985, SEC.1.

IC 36-7-1-6

Sec. 6. "Development plan" means a specific plan for the development of real property that

(1) requires approval by a plan commission under the 1400 series of IC 36-7-4;

(2) includes a site plan;

(3) satisfies the development requirements specified in the zoning ordinance regulating the development; and

(4) contains the plan documentation and supporting information required by the zoning ordinance.

As added by Acts 1981, P.L.309, SEC.6. Amended by Acts 1981, P.L.310, SEC.2; P.L.320-1995, SEC.1.

IC 36-7-1-7

Sec. 7. "Housing authority" refers to a housing authority established under IC 36-7-18.

As added by Acts 1981, P.L.309, SEC.7.

IC 36-7-1-8

Sec. 8. "Housing project" means any work or undertaking of a housing authority in planning improvements; acquiring property; demolishing structures; constructing, altering, and repairing improvements; and performing other acts necessary to

(1) demolish, clear, or remove buildings from any area in which the majority of dwellings is detrimental to the public safety, health, and morals because of dilapidation, overcrowding, faulty design, lack of ventilation, light, or sanitary facilities, or a combination of these factors;

(2) provide decent, safe, and sanitary living accommodations; or

(3) accomplish a combination of these purposes.

As added by Acts 1981, P.L.309, SEC.8.

IC 36-7-1-9

(Repealed by P.L.213-1986, SEC.12.)

IC 36-7-1-10

Sec. 10. "Metropolitan development commission" means the plan commission established by IC 36-7-4-202(c) for a county having a consolidated city. The term does not include a metropolitan plan commission established under IC 36-7-4-202(a).

As added by Acts 1981, P.L.309, SEC.10.

IC 36-7-1-11

Sec. 11. "Metropolitan plan commission" means an advisory plan commission cooperatively established by a county and a second class city under IC 36-7-4-202(a). The term does not include the metropolitan development commission established by IC 36-7-4-202(c).

As added by Acts 1981, P.L.309, SEC.11.

IC 36-7-1-12

Sec. 12. "Municipal plan commission" means a city plan commission or a town plan commission.

As added by Acts 1981, P.L.309, SEC.12.

IC 36-7-1-13

Sec. 13. "Park board" means board of parks and recreation or board of park commissioners.

As added by Acts 1981, P.L.309, SEC.13.

IC 36-7-1-14

Sec. 14. "Plan commission," unless preceded by a qualifying adjective, means an advisory plan commission, an area plan commission, or a metropolitan development commission. The term does not include a regional planning commission established under IC 36-7-7.

As added by Acts 1981, P.L.309, SEC.14.

IC 36-7-1-14.5

Sec. 14.5. "Planned unit development" means development of real property

(1) in the manner set forth by the legislative body in the zoning ordinance; and

(2) that meets the requirements of the 1500 series of IC 36-7-4.

As added by P.L.320-1995, SEC.2.

IC 36-7-1-15

Sec. 15. "Planning department" refers to an area planning department under the area planning law.

As added by Acts 1981, P.L.309, SEC.15.

IC 36-7-1-16

Sec. 16. "Public place" includes any tract owned by the state or a political subdivision.

As added by Acts 1981, P.L.309, SEC.16.

IC 36-7-1-17

Sec. 17. "Public way" includes highway, street, avenue, boulevard, road, lane, or alley.

As added by Acts 1981, P.L.309, SEC.17.

IC 36-7-1-18

Sec. 18. "Redevelopment" includes the following activities:

- (1) Acquiring real property in blighted areas
- (2) Replatting and determining the proper use of real property acquired
- (3) Opening, closing, relocating, widening, and improving public ways
- (4) Relocating, constructing, and improving sewers, utility services, off-street parking facilities, and levees
- (5) Laying out and constructing necessary public improvements, including parks, playgrounds, and other recreational facilities
- (6) Restricting the use of real property acquired according to law
- (7) Repairing and maintaining buildings acquired, if demolition of those buildings is not considered necessary to carry out the redevelopment plan
- (8) Rehabilitating real or personal property, whether or not acquired, to carry out the redevelopment or urban renewal plan
- (9) Disposing of property acquired on the terms and conditions and for the uses and purposes that best serve the interests of the units served by the redevelopment commission
- (10) Making payments required or authorized by IC 8-23-17
- (11) Performing all acts incident to the statutory powers and duties of a redevelopment commission

As added by Acts 1981, P.L.309, SEC.18. Amended by Acts 1982, P.L.77, SEC.7; P.L.18-1990, SEC.291.

IC 36-7-1-19

Sec. 19. "Subdivision" means the division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by the legislative body under IC 36-7-4.

As added by Acts 1981, P.L.309, SEC.19. Amended by Acts 1981, P.L.310, SEC.3; Acts 1982, P.L.211, SEC.1.

IC 36-7-1-20

Sec. 20. "Thoroughfare" means a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public

use of the thoroughfare and all surface and subsurface improvements on it, such as sidewalks, curbs, shoulders, and utility lines and mains.

As added by Acts 1981, P.L.309, SEC.20. Amended by Acts 1981, P.L.310, SEC.4; P.L.220-1986, SEC.1.

IC 36-7-1-21

(Repealed by Acts 1981, P.L.310, SEC.94.)

IC 36-7-1-22

Sec. 22. "Zoning ordinance" refers to any ordinance adopted under the 600 series of IC 36-7-4 or under prior law. The term includes

(1) PUD district ordinances (as defined in IC 36-7-4-1503); and

(2) all zone maps incorporated by reference into the ordinance as provided in the 600 series of IC 36-7-4.

As added by P.L.335-1985, SEC.2. Amended by P.L.220-1986, SEC.2; P.L.320-1995, SEC.3.

IC 36-7-4

IC 36-7-4-100

Sec. 100. This series (Sections 100 through 199 of this chapter) may be cited as follows: 100 SERIES.APPLICABILITY AND RULES OF CONSTRUCTION.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-101

Sec. 101. The "advisory planning law" consists of those parts of this chapter that are applicable to advisory planning. Sections and subsections of this chapter with headings that include "ADVISORY" apply to advisory planning. In addition, sections and subsections of this chapter without headings apply to advisory planning as well as area planning and metropolitan development.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-102

Sec. 102. The "area planning law" consists of those parts of this chapter that are applicable to area planning. Sections and subsections of this chapter with headings that include "AREA" apply to area planning. In addition, sections and subsections of this chapter without headings apply to area planning as well as advisory planning and metropolitan development.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-103

Sec. 103. The "metropolitan development law" consists of those parts of this chapter that are applicable to metropolitan development. Sections and subsections

of this chapter with headings that include “METRO” apply to metropolitan development. In addition, sections and subsections of this chapter without headings apply to metropolitan development as well as area planning and advisory planning.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-104

Sec. 104. A citation in this chapter to the term “series,” preceded by a numerical designation and two (2) zeroes, shall be construed as a reference to all the sections of this chapter (including the advisory planning law, the area planning law, and the metropolitan development law) that have that same numerical designation.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-105

(Repealed by Acts 1981, P.L.310, SEC.94.)

IC 36-7-4-106

Sec. 106. If a provision of the prior advisory planning laws, area planning laws, township joinder laws, or metropolitan development laws has been replaced in the same form or in a restated form by a provision of this chapter, then a citation to the provision of the prior law shall be construed as a citation to the corresponding provision of this chapter.

As added by Acts 1981, P.L.309, SEC.23.

Levels of Responsibility in Transportation Planning

Several levels of government are involved in managing and financing transportation systems. The federal government is a substantial financial partner of local and state governments in transportation funding and planning. Local participation in the planning process takes place through cities, towns, counties and metropolitan planning organizations.

National Level of Responsibility

The primary function of planning at the national level is for funding highway projects and appropriate bills to enact legislation programs. Allocation of funds is accomplished through the political process and involves a number of organizations and programs. A major player is the Federal Highway Administration (FHWA) of the United States Department of Transportation. FHWA is headquartered in Washington, D.C., with field offices located across the United States. The FHWA performs its mission through a number of programs, the principal one being the Federal-Aid Highway Program (FAHP). The FAHP provides federal financial assistance

to states so they can construct and improve the National Highway System (NHS), urban and rural roads, and bridges. The program provides monies for general improvements and the development of safe highways and roads.

Two major pieces of federal legislation have shaped the metropolitan transportation planning process—the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and the Transportation Equity Act for the 21st Century (TEA-21) of 1998. The first marks the shift to a multimodal approach to funding, and the second law is an extension of the first. Before the end of 2003, new federal legislation will guide the planning process for the years to follow. The reauthorization process and its impact on local government planning are discussed in Chapter 12 of this manual, along with a full summary of TEA-21 and proposed future legislation affecting transportation planning.

The Intermodal Surface Transportation Efficiency Act

On December 18, 1991, President George H. W. Bush signed ISTEA into law, thus authorizing \$151 billion for highway, safety, and transit projects through FY1997. The purpose of the new law was to develop an economical, energy-efficient, environmentally sound, and globally competitive national intermodal transportation system (Texas A & M). Legislators who wrote ISTEA not only recognized the need for a new approach to transportation planning, but also acknowledged the need to build upon existing programs, principles, and practices. They expanded the traditional “3C” approach (continuing, comprehensive, and cooperative planning) to create a more modally integrated planning process to better meet the needs of an increasingly diverse and complex society (Texas A & M).

The Transportation Equity Act for the 21st Century

On June 9, 1998, President Clinton signed into law the TEA-21, the latest federal transportation act. The act authorized \$218 billion for highway, safety, and transit projects through FY2003. The bulk of the metropolitan transportation planning process as established in ISTEA continued uninterrupted under TEA-21, although TEA-21 included key modifications to ISTEA. Those who developed TEA-21 streamlined the planning process and increased its efficacy for each metropolitan area affected by consolidating the 16 planning facets from ISTEA into the seven broad areas of activity that follow:

- Support the economic vitality of the metropolitan area
- Increase the safety and security of the transportation system for motorized and nonmotorized users
- Increase the accessibility and mobility options available for transportation of people and freight
- Protect and enhance the environment
- Enhance the integration and connectivity of the transportation system

- Promote efficient system management and operation
- Emphasize the preservation of the existing transportation system (Texas A & M)

Chapter 12 contains a full summary of TEA-21 and the future acts of transportation planning.

State Level of Responsibility

Responsibilities of the Indiana Department of Transportation (INDOT) related to planning and programming are established by federal and state statutes and regulations rooted in TEA 21, as well as inherent activities considered vital planning functions by either INDOT management, division staff members, or the people of Indiana (See **IC 8-23-2**).

INDOT Planning and Programming

Planning and programming performed by INDOT include the elements detailed below:

- *Statewide Planning Process and Overall Plan*
Each state is required by federal law and federal regulations to develop statewide transportation plans and programs in cooperation with metropolitan planning organizations (MPOs) and affected local officials.
- *The Sufficiency-Rating Process*
State law (**IC 8-23-12-2**) requires the use of the sufficiency-rating principle to determine which projects shall be included in its long-range construction program.
- *Economic Planning*
Several federally-required planning factors relate to the strength of the economy. They include recreational travel and tourism, the economic effects of transportation decisions, long-range needs for movement of goods, and investment strategies to support rural economic growth and tourism.
- *Planning for Bicycles and Pedestrians*
United States Code (**23 USC 217**) requires each state department of transportation to fund the position of State Bicycle and Pedestrian Coordinator to promote and facilitate nonmotorized travel.
- *Land Use Planning*
Under United States Code (**23 USC 135**), decisions on land use and land development must be considered in the planning process.
- *MPO Plan Coordination*
Coordination of state plans and programs with local MPO plans is another key requirement of federal law (**23 USC 135**). It reinforces the importance of coordination, cooperation, and continuous involvement between states and MPOs.
- *Public Participation*
Federal law (**23 USC 135**) requires that, while developing the long-range plan, states must

provide citizens, affected public agencies, employee representatives, private providers of transportation, and other interested parties a reasonable opportunity to comment on the proposed plan.

TEA-21 provides some guidelines regarding statewide planning and funding issues. The most significant continuing provisions include the following characteristics:

- Federal reliance on the statewide transportation planning process, established under ISTEA, as the primary mechanism for cooperative transportation decision making throughout a state
- Coordination of statewide planning with metropolitan planning
- Opportunity for public involvement provided throughout the planning process
- Emphasis on fiscal constraint and public involvement in the development of a three-year statewide transportation improvement program
- Development of additional longer-term statewide transportation plans and programs (TEA-21 Fact Sheet Index)

Funding

FHWA statewide transportation planning funding derives from a two percent takedown of state apportionments for maintenance of the interstate highways, NHS, surface transportation (STP), congestion mitigation and air quality improvement, and bridge rehabilitation and replacement programs. Statewide planning is an eligible activity for additional funding under the NHS and STP programs (TEA-21 Fact Sheet Index).

Local Level of Responsibility

Planning at the local level is generally accomplished by large local MPOs. However, many regions of Indiana are not located within reach of such an organization. Therefore, small MPOs, non-MPOs, and regional planning commissions (RPCs) must serve them. This manual discusses planning organizations that serve a variety of local areas, both large and small.

Large Metropolitan Planning Organizations (MPOs)

MPOs are designated for each urbanized area that has a population exceeding 50,000. MPOs are required to develop a unified work-planning program. Each MPO is required to prepare a long-range (20-year horizon) transportation plan that includes a financial plan. This plan must consider the capital investment already made, cover whatever measures are necessary to preserve the existing transportation system, and make the most efficient use of existing facilities.

The Federal Transit Administration (FTA) provides planning funds through the Section 5305 program (formerly known as

Section 8) to aid in transportation planning for large urban areas. The FTA makes funds available to large MPOs so they can perform the necessary long and short-range transportation planning and programming within their defined areas of responsibility. Every MPO is also required to develop a transportation improvement program (TIP), a short-range program of federally-funded projects to be carried out during the next three years. INDOT works with the MPOs in the development of these plans. A portion of Section 5303 funding is set aside for state transit planning as performed by INDOT, and the remaining funds are distributed among the 12 large MPOs throughout the state.

Each MPO develops a 25-year transportation plan, taking into account the future needs of the transportation system based on sound planning practices. This plan is updated every three to five years.

Transportation Planning within Small Communities

Small MPOs function under much different circumstances than do large ones. Nearly all small and medium-size communities share four issues:

- Lack of resources to meet planning requirements
- Need for education for staff and stakeholders
- Communications and information overload
- Technology, both in-house and applications from external sources

All planning agencies—small, medium, or large—face similar problems, but for small and medium-size communities, the solutions may be different from those for larger cities. Small and medium-size MPOs may have limited resources, so effective use of resources through traditional and innovative management techniques becomes critical. Many small urban areas do not have sufficient funds to conduct expensive travel surveys or recruit and retain a team of specialized technical staff (Schutz 2000).

The needs and the abilities of small MPOs are recognized in 23 CFR 450.316(c):

In attainment areas not designated as TMAs simplified procedures for the development of plans and programs, if considered appropriate, shall be proposed by the MPO in cooperation with the State and transit operator, and submitted by the State for approval by the FHWA and the FTA. In developing proposed simplified planning procedures, consideration shall be given to the transportation problems in the area and their complexity, the growth rate of the area (i.e., fast, moderate or slow), the appropriateness of the factors specified for consideration in this subpart including air quality, and the desirability of continuing any planning process that has already been established. Areas experiencing fast growth should consider a planning process that addresses all of the general requirements specified in this subpart. As a minimum, all areas employing a simplified planning process will need to develop a transportation plan to be approved by the MPO and a TIP to be approved by the MPO and the Governor.

Areas Not Serviced by MPOs

Transportation planning often lacks direction in small urban and rural areas because many of them lack a well-defined transportation planning process. INDOT can provide information on planning techniques and serve as a resource to small urban and rural areas, regional planning commissions, and district development staff.

Although INDOT can help a small urban or rural area resolve its transportation planning issues, a local authority outside the jurisdiction of a large MPO must usually initiate the effort to obtain assistance. Here is a list of ways non-MPO areas can secure help in building their local transportation plans:

- Contact the Program Development Engineer in their particular district.
- INDOT periodically holds public involvement meetings, which local officials may attend to voice their planning concerns. Local officials can contact their particular district offices to find out when and where meetings will be held.
- INDOT has monies to fund statewide planning and research (SPR) fund. SPR funds include \$450,000 per year for small MPO and regional planning commissions. Local officials of small urban or rural areas can apply for grants to fund their planning activities.
- INDOT supports non-MPO area officials by consulting with them through an annual Program Development Process (PDP) and a state consultation process involving meetings at its six district offices.
- Forums on statewide planning issues are held periodically throughout the state.
- The six districts within INDOT conduct public meetings to discuss the selection, planning, and programming of current and future projects. Non-MPO officials are welcome to attend and voice their transportation planning concerns (Smith).

Note: in 2003 the U.S. Department of Transportation's Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) issued a final rule specifying a role for rural local officials in the statewide transportation planning process. The rule reflects a compromise proposed by the National Association of Counties (NACo), the National Association of Development Organizations (NADO), and the American Association of State Highway and Transportation Officials (AASHTO). The American Public Works Association (APWA) has worked closely with NACo and NADO to secure a clear role for local officials in transportation planning. Spearheaded by APWA's Small Cities/Rural Communities Forum, many comments, letters, and personal meetings have been generated to express the perspective of local officials of rural areas and small cities. Additionally, the rule requires that states create and "document" a process for consultation that is "separate and discrete" from the public involvement process. (APWA 1-24-03)

Regional Planning Commissions

The legislative bodies of all counties within a region may request the establishment of a regional planning commission (RPC) by making concurrent resolutions to that effect. Official copies of the resolutions must be forwarded to the Governor, who shall then appoint himself or a member of his staff to select other members of the commission and to act as its temporary chairperson until officers have been elected. (IC 36-7-7-2)

TEA-21 also provides guidelines for metropolitan planning issues. The most significant guidelines contain these continuing provisions:

- Local officials, in cooperation with state and transit operators, shall remain responsible for determining the best mix of transportation investments to meet metropolitan transportation needs.
- MPOs are responsible for adopting a transportation plan: Both the Governor and MPO must approve the transportation improvement program (TIP).
- A transportation plan must include a 20-year perspective and allow for maintaining the consistency of air quality, show fiscal restraint, and promote public involvement established under ISTEPA.
- A congestion management system is still required in larger metropolitan areas, defined as urban areas with a population larger than 200,000.
- Larger urban areas (population over 200,000) must obtain INDOT certification of their planning process.
- Large urban areas that have not met air quality standards should find alternatives to road capacity additions by limiting the number of single occupant vehicles through a single occupant vehicle project. (TEA-21 Fact Sheet Index)

Funding

Metropolitan transportation planning funding derives from two sources: The first is a one percent takedown from the STP, Bridge, CMAQ, IM, and NHS programs. The second is from other transit authorizations, the funding for which comes from both the mass transit account of the Highway Trust Fund and the General Fund (TEA-21 Fact Sheet Index).

The following statutes, IC 36-7-7, IC 36-7-2 and IC 8-23-2, are applicable to the state and local levels of responsibility in transportation planning:

IC 36-7-7

IC 36-7-7-1

Sec. 1. This chapter applies to any area consisting of two (2) or more counties (referred to as a “region” in this chapter).

As added by Acts 1981, P.L.309, SEC.26.

IC 36-7-7-2

Sec. 2. (a) The legislative bodies of all the counties in a region may, by concurrent resolutions, request the establishment of a regional planning commission (referred to as a “commission” in this chapter). Official copies of the resolutions must be forwarded to the Governor, who shall then appoint himself or a member of his staff to immediately notify the other members of the commission and to act as temporary chairman for the election of officers. The commission shall, by resolution, designate a name for itself that reflects the commission’s role and function and that may include the words “Regional Planning Commission.”

(b) This subsection applies to each commission established after July 1, 1978. A county participating in a commission is not subject to the tax imposed under Section 12 of this chapter, unless all the concurrent resolutions establishing the commission accept the application of the tax.

As added by Acts 1981, P.L.309, SEC.26. Amended by P.L.144-1992, SEC.1.

IC 36-7-2

IC 36-7-2-1

Sec. 1. This chapter applies to all units except townships.

As added by Acts 1980, P.L.211, SEC.2.

IC 36-7-2-2

Sec. 2. A unit may plan for and regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements. A unit may also regulate the platting and subdividing of real property and number the structures abutting public ways. In planning for and regulating the use of land or in regulating the platting or subdividing of real property, a unit may also regulate access to incident solar energy for all categories of land use.

As added by Acts 1980, P.L.211, SEC.2. Amended by Acts 1981, P.L.311, SEC.1.

IC 36-7-2-3

Sec. 3. A unit may inspect any structure or other improvement at any reasonable time.

As added by Acts 1980, P.L.211, SEC.2.

IC 36-7-2-4

Sec. 4. A unit may regulate methods of and use of materials in repair, alteration, and construction of structures and other improvements. The unit also may require the execution of a bond by any person repairing, altering, or constructing structures or other improvements.

As added by Acts 1980, P.L.211, SEC.2.

IC 36-7-2-5

Sec. 5. A unit may repair, alter, or destroy structures and other improvements if necessary.

As added by Acts 1980, P.L.211, SEC.2.

IC 36-7-2-6

Sec. 6. A unit may regulate excavation, mining, drilling, and other movement or removal of earth below ground level.

As added by Acts 1980, P.L.211, SEC.2.

IC 36-7-2-7

Sec. 7. A unit may promote economic development and tourism.

As added by Acts 1980, P.L.211, SEC.2.

IC 36-7-2-8

Sec. 8. (a) As used in this section, "solar energy system" means either of the following:

(1) any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, or for water heating; or

(2) any structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of energy for space heating or cooling, or for water heating.

(b) A unit may not adopt any ordinance which has the effect of prohibiting or unreasonably restricting the use of solar energy systems other than for the preservation or protection of the public health and safety.

(c) This section does not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of this state to promote and encourage the use of solar energy systems and to remove obstacles to their use. Reasonable restrictions on solar energy systems are those restrictions which:

(1) do not significantly increase the cost of the system or significantly decrease its efficiency; or

(2) allow for an alternative system of comparable cost and efficiency.

As added by Acts 1981, P.L.311, SEC.2.

IC 36-7-2-9

Sec. 9. Each unit shall require compliance with

(1) the code of building laws that is adopted in the rules of the fire prevention and building safety commission under IC 22-13;

(2) orders issued under IC 22-13-2-11 that grant a variance to the code of building laws described in Subdivision (1);

(3) orders issued under IC 22-12-7 that apply the code of building laws described in Subdivision (1);

(4) IC 22-15-3-7; and

(5) a written interpretation of a building law binding on the unit under IC 22-13-5-3 or IC 22-13-5-4.

As added by P.L.245-1987, SEC.19. Amended by P.L.71-1999, SEC.3.

IC 8-23-2**IC 8-23-2-1**

Sec. 1. The Indiana Department of Transportation is established.

As added by P.L.112-1989, SEC.5.

IC 8-23-2-2

Sec. 2. (a) The Governor shall appoint a commissioner who is responsible for organizing and administering the department.

(b) The commissioner

(1) serves at the pleasure of the Governor; and

(2) is entitled to receive compensation set by the budget agency.

As added by P.L.112-1989, SEC.5.

IC 8-23-2-4.1

Sec. 4.1. The department is responsible for the following activities:

(1) The identification, development, coordination, and implementation of the state's transportation policies

(2) The approval of applications for federal transportation grants from funds allocated to the state

(A) from the Highway Trust Fund (23 U.S.C.);

(B) from the Aviation Trust Fund (49 U.S.C.);

(C) through the Urban Mass Transportation Administration (49 U.S.C. 1601 et seq.); or

(D) from any other federal grant that has a transportation component.

(3) The review, revision, adoption, and submission of budget proposals

(4) The construction, reconstruction, improvement, maintenance, and repair of

(A) state highways; and

(B) a toll road project or toll bridge in accordance with a contract or lease entered into with the Indiana transportation finance authority under IC 8-9.5-8-7 or IC 8-9.5-8-8.

(5) The administration of programs as required by law, including the following:

(A) IC 8-3-1 (railroads)

(B) IC 8-3-1.5 (rail preservation)

(C) IC 8-21-1 (aeronautics)

(D) IC 8-21-9 (airports)

(E) IC 8-21-11 (aviation development program)

As added by P.L.1-1991, SEC.83.

IC 8-23-2-5

Sec. 5. The department, through the commissioner or the commissioner's designee, shall

(1) develop, continuously update, and implement

(A) long range comprehensive transportation plans;

(B) work programs; and

(C) budgets to assure the orderly development and maintenance of an efficient statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize, whenever possible, improved transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including

(A) developing and recommending public transportation policies, plans, and work programs;

(B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;

(C) developing work programs for the utilization of federal mass transportation funds;

(D) furnishing data from surveys, plans, specifications, and estimates required to qualify a state agency or political subdivision for federal mass transportation funds;

(E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;

(F) serving, upon designation of the Governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;

(G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and

(H) developing and including in its own proposed transportation plan a specialized transportation services plan for the elderly and persons with disabilities;

(6) provide technical assistance to units of local government with road and street responsibilities;

(7) develop, undertake, and administer the program of research and extension required under IC 8-17-7; and

(8) allow public testimony in accordance with Section 17 of this chapter whenever the department holds a public hearing (as defined in Section 17 of this chapter).

As added by P.L.112-1989, SEC.5. Amended by P.L.18-1990, SEC.207; P.L.23-1993, SEC.20; P.L.52-1995, SEC.2.

Powers and Duties of the Planning Commission

This section summarizes the basic duties of the planning commissions and the planning commissioner. It also distinguishes the differences between area planning commissions and advisory planning commissions. The section also covers the duties of the executive director as well as some general "tools of the trade" for planning commissioners.

Area Planning Commissions

The establishment and duties of area planning commissions and their leadership as outlined by law are discussed in the following subsections.

Establishment of Area Planning Commissions

The board of county commissioners establishes area planning commissions wherever the county and at least one municipality have enacted an ordinance adopting a provision for creation of an area planning commission. Responsibilities of an area planning commission are to develop urban and rural areas and to assume the planning function for the city, town, and county planning departments.

Each county may establish an area planning department within its local government that consists of

- an area planning commission;
- an area board of zoning appeals;
- an executive director; and
- such staff as the area planning commission considers necessary.

Each municipality or county desiring to establish an area planning department within its government can adopt an ordinance approving the area planning law, fix a date for the establishment of the area planning department, and provide for the appointment of representatives to the commission. When a municipality or a county adopts such an ordinance, it shall certify a copy of it to each legislative body within the county. When a county and at least one municipality within the county each adopt an ordinance adopting the area planning law and fix a date for the establishment of the department, the legislative body of the county shall establish the planning department.

Duties of Area Planning Commissions (IC 36-7-4-401)

The duties of planning commissions are as listed:

- Supervise and make rules for the administration of the commission's affairs (in the case of an advisory planning commission) or those of the planning department (in the case of an area planning commission or a metropolitan development commission).
- Prescribe uniform rules pertaining to investigations and hearings.
- Keep a complete record of all the departmental proceedings.
- Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission (in the case of an advisory planning commission) or of the planning department (in the case of an area planning commission or the metropolitan development commission).
- Prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter.
- Adopt a seal.
- Certify to all official acts.
- Supervise the fiscal affairs of the commission (in the case of an advisory planning commission) or of the planning department (in the case of an area planning commission).
- Prepare and submit an annual budget in the same manner as other departments of county or municipal government and limit all expenditures to the provisions made for them by the fiscal body of the county or municipality.

Duties of the Executive Director of the Area Planning Commission (IC 36-7-4-312):

As a major part of the planning commission, the executive director performs the following specific duties:

- Proposes an annual plan for the operation of the planning department.
- Administers the plan as approved by the commission.
- Supervises the general administration of the planning department.
- Keeps records of the planning department, and is responsible for the custody and preservation of all papers and documents of the planning department.
- Subject to the approval of the commission, appoints and removes employees of the planning department, according to the standards and qualifications fixed by the commission and without regard to political affiliation.
- Prepares and presents the annual report to the commission.
- Performs such other duties as the commission may direct.

Advisory Planning Commissions

The local legislative bodies for a municipality or for a county can establish an advisory planning commission by ordinance (IC 36-7-4-202). In addition, in counties having a population of more than 160,000 but less than 200,000 or more than 112,000 but less than 125,000, the legislative bodies of that county, and of the city having the largest population in that county, may establish by identical ordinances, a metropolitan plan commission as a department of county government. These ordinances must also specify the legal name of the commission.

Tools of the Trade for Planning Commissioners

New planning commissioners are wise to keep copies of several important documents on hand for reference. They are the tools of the trade. The list below can be used as a guide to help in getting started. A new commissioner should go over each item to understand its usefulness. More seasoned commissioners may also find this list helpful. A list of important documents to copy for reference is as follows:

- The jurisdiction's general plan and all amendments to it
- Backup data reports
- A base map with a usable scale and sheet size
- Regulatory ordinances
- The agency's annual budget
- The agency's work program for the year
- The commission's bylaws and written procedures
- Regional or state policies or programs (to which new commissioners may be expected to refer on occasion)

The following sections of IC 36-7-4 pertain to area and advisory planning commissions.

IC 36-7-4

Sec. 200. This series (Sections 200 through 299 of this chapter) may be cited as follows:
200 SERIES.COMMISSION ESTABLISHMENT AND MEMBERSHIP.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-201

Sec. 201.(a) For purposes of IC 36-1-3-6, a unit wanting to exercise planning and zoning powers in Indiana must do so in the manner provided by this chapter.

(b) The purpose of this chapter is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the ends

(A) that highway systems be carefully planned;

(B) that new communities grow only with adequate public way, utility, health, educational, and recreational facilities;

(C) that the needs of agriculture, industry, and business be recognized in future growth;

(D) that residential areas provide healthful surroundings for family life; and

(E) that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

(c) Furthermore, municipalities and counties may cooperatively establish single and unified planning and zoning entities to carry out the purpose of this chapter on a countywide basis.

(d) METRO. Expanding urbanization in each county having a consolidated city has created problems that have made the unification of planning and zoning functions a necessity to insure the health, safety, morals, economic development, and general welfare of the county. To accomplish this unification, a single planning and zoning authority is established for the county.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.5; P.L.192-1984, SEC.3.

IC 36-7-4-201.1

YAMD.1994.

Sec. 201.1. A local zoning ordinance that addresses a satellite receiver antenna and another type of antenna is void unless the zoning ordinance

(1) has a reasonable and clearly defined health, safety, or aesthetic objective;

(2) does not

(A) impose an unreasonable restriction on, or prevent the reception of, satellite signals by satellite receiver antennas; or

(B) impose costs on the users of satellite receiver antennas that are excessive in comparison to the purchase and installation cost of the satellite receiver antenna; and

(3) does not prohibit installation of a satellite receiver antenna that is not more than two (2) feet in diameter.

As added by P.L.167-1994, SEC.1.

IC 36-7-4-202

Sec. 202. (a) ADVISORY. The legislative body of a county or municipality may establish by ordinance an advisory plan commission. In addition, in a county having a population of

(1) more than one hundred sixty thousand (160,000) but less than two hundred thousand (200,000); or

(2) more than one hundred twelve thousand (112,000) but less than one hundred twenty-five thousand (125,000); the legislative bodies of that county and of the city having the largest population in that county may establish by identical ordinances a metropolitan plan commission as a department of county government. These ordinances must specify the legal name of the commission for purposes of Section 404(a) of this chapter.

(b) AREA. There may be established in each county an area planning department in the county government, having

(1) an area plan commission;

(2) an area board of zoning appeals;

(3) an executive director; and

(4) such staff as the area plan commission considers necessary.

Each municipality and each county desiring to participate in the establishment of a planning department may adopt an ordinance adopting the area planning law, fix a date for the establishment of the planning department, and provide for the appointment of its representatives to the commission. When a municipality or a county adopts such an ordinance, it shall certify a copy of it to each legislative body within the county. When a county and at least one (1) municipality within the county each adopt an ordinance adopting the area planning law and fix a date for the establishment of the department, the legislative body of the county shall establish the planning department.

(c) METRO. A metropolitan development commission is established in the department of metropolitan development of the consolidated city. The legislative body of the consolidated city may adopt ordinances to regulate the following:

(1) The time that the commission holds its meetings

(2) The voting procedures of the commission

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.12-1992, SEC.163; P.L.164-1995, SEC.15.

IC 36-7-4-203

Sec. 203. (a) ADVISORY. After a metropolitan planning commission is established, it shall exercise exclusively the planning and zoning functions of the county and of the second class city, and the separate planning and zoning functions of the county plan commission and the city plan commission cease.

(b) AREA. After the planning department is established and the participating legislative bodies have adopted a zoning ordinance, the planning department shall exercise exclusively the planning and zoning functions of the county and of the participating municipalities, except as provided in Section 918 of the area planning law.

Where other statutes confer planning and zoning authority on a participating municipality or a county, their plan commissions shall continue to exercise that authority until such time as the planning department is established and the participating legislative bodies adopt a zoning ordinance.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.6.

IC 36-7-4-206

Sec. 206. AREA. After the planning department is established, a nonparticipating municipality may not exercise planning and zoning powers outside its corporate boundaries.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-218

Sec. 218. (a) When an initial term of office of a citizen member expires, each new appointment of a citizen member is

(A) for a term of four (4) years (in the case of a municipal, county, or area plan commission);

(B) for a term of three (3) years (in the case of a metropolitan plan commission); or

(C) for a term of one (1), two (2), or three (3) years, as designated by the appointing authority (in the case of the metropolitan development commission).

A member serves until his successor is appointed and qualified. A member is eligible for reappointment.

(b) ADVISORY. Upon the establishment of a nine (9) member municipal plan commission, the citizen members shall initially be appointed for the following terms of office:

(A) One (1) for a term of two (2) years

(B) Two (2) for a term of three (3) years

(C) Two (2) for a term of four (4) years

Upon the establishment of a seven (7) member municipal plan commission, two (2) citizen members shall initially be appointed for a term of three (3) years and two (2) shall initially be appointed for a term of four (4) years. Each member's term expires on the first Monday of January of the second, third, or fourth year, respectively, after the year of the member's appointment.

(c) ADVISORY. Upon the establishment of a county plan commission, the citizen members shall initially be appointed for the following terms of office:

(A) One (1) for a term of one (1) year.

(B) One (1) for a term of two (2) years

(C) One (1) for a term of three (3) years

(D) Two (2) for a term of four (4) years

Each member's term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(d) ADVISORY. Upon the establishment of a metropolitan plan commission, the citizen members shall initially be appointed for the following terms of office:

(A) Three (3) for a term of one (1) year, one (1) appointed by the county legislative body and two (2) by the city executive.

(B) Two (2) for a term of two (2) years, one (1) by each appointing authority.

(C) Two (2) for a term of three (3) years, one (1) by each appointing authority.

(e) AREA. If there is one (1) citizen member on the area planning commission, his initial term of office is one (1) year. If there are two (2) citizen members, one (1) shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. If there are three (3) or more citizen members, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and any remainder for a term of four (4) years. Each member's term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(f) ADVISORY. AREA. The appointing authority may remove a member from the plan commission for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at his residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the circuit or superior court of the county. The court may, pending the outcome of the appeal, order the removal or stay the removal of the member.

(g) METRO. The appointing authority may remove a citizen member from the metropolitan development commission. The appointing authority must mail notice

of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.11; P.L.192-1984, SEC.5.

IC 36-7-4-300

Sec. 300. This series (Sections 300 through 399 of this chapter) may be cited as follows: 300 SERIES.COMMISSION ORGANIZATION.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-301

Sec. 301. A quorum consists of a majority of the entire membership of the planning commission, who are qualified by this chapter to vote.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-302

Sec. 302. (a) ADVISORY. AREA. Action of a planning commission is not official, unless it is authorized, at a regular or special meeting, by a majority of the entire membership of the planning commission.

(b) METRO. Action of the metropolitan development commission is not official, unless it is authorized, at a regular or special meeting, by:

(A) at least six (6) members, when at least ten (10) members are present at the meeting;

(B) at least five (5) members, when eight (8) or nine (9) members are present at the meeting; or

(C) at least four (4) members, when fewer than eight (8) members are present at the meeting.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.212, SEC.1; P.L.192-1984, SEC.7; P.L.164-1995, SEC.17.

IC 36-7-4-303

Sec. 303. At its first regular meeting in each year, the planning commission shall elect from its members a president and a vice-president. The vice-president may act as president of the planning commission during the absence or disability of the president.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-304

Sec. 304. The planning commission may appoint and fix the duties of a secretary, who is not required to be a member of the commission.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.15.

IC 36-7-4-305

Sec. 305. (a) ADVISORY. The municipality or the county shall provide suitable offices for the holding of advisory plan commission meetings and for preserving the plans, maps, accounts, and other documents of the commission.

(b) AREA. After the establishment of the planning department, the county plan commission and participating municipal plan commissions shall transfer their property to the planning department.

(c) AREA. Except as may be necessary for the exercise of the powers reserved to municipal boards of zoning appeals by the 900 series of this chapter, all ordinances, maps, reports, minute books, documents, and correspondence of any municipal or county plan commission, or board of zoning appeals within the jurisdiction of a planning department, shall be made available to or transferred to, the plan commission on its written request. The plan commission shall procure suitable offices for the conduct of its work and the work of the planning department.

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.192-1984, SEC.8.

IC 36-7-4-306

Sec. 306. The plan commission shall fix the time for holding regular meetings each month, or as necessary. The commission shall keep minutes of its meetings. The minutes of commission meetings and all records shall be filed in the office of the commission and are public records.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.16.

IC 36-7-4-307

Sec. 307. Special meetings of a plan commission may be called by the president or by two (2) members of the commission upon written request to the secretary.

The secretary shall send to all members, at least three (3) days before the special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if

(1) the date, time, and place of a special meeting are fixed in a regular meeting; and

(2) all members of the commission are present at that regular meeting.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.17.

IC 36-7-4-308

Sec. 308. (a) ADVISORY. After a legislative body has adopted an ordinance establishing a municipal or county planning commission, the fiscal body of the municipality or the county, as the case may be, may

make appropriations to carry out the duties of the commission.

(b) **ADVISORY.** After a metropolitan plan commission is established, the commission shall use all amounts previously appropriated to, but unexpended by, the county plan commission and the second class city plan commission without any further appropriation or transfer. Then the county fiscal body shall appropriate all necessary amounts for the use of the commission, but the city legislative body may appropriate additional amounts for the use of the commission. These amounts shall be deposited with the county treasurer in a fund to be known as the metropolitan plan fund.

(c) **AREA.** After the planning department is established, the county fiscal body shall appropriate and make available to the planning department an amount equal to three cents (\$.03) per person per month for each person in the county's population. This amount is to finance the planning department's operation from its establishment until appropriations are available to it through regular county budget and appropriation procedures. The county fiscal body shall appropriate sufficient amounts to the planning department to insure the continued functioning of the planning department within the participating units. This appropriation shall be made in conformity with the fiscal body's policy regarding the operating budgets of the various divisions of county government.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-309

Sec. 309. ADVISORY. AREA. Each plan commission may expend, in accord with applicable municipal or county fiscal procedures, all amounts appropriated to it for the purposes and activities authorized by this chapter. In the case of a metropolitan plan commission, at the end of each fiscal year, any unexpended part of the metropolitan planning fund appropriated by the county reverts to the county general fund, and any unexpended part appropriated by the second class city reverts to the city general fund.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-310

Sec. 310. (a) A municipality (in the case of a municipal plan commission or the metropolitan development commission) or a county (in the case of a county plan commission, a metropolitan plan commission or an area plan commission) may accept gifts, donations, and grants from private or governmental sources for advisory plan commission purposes or planning department purposes, as the case may be.

(b) Any money so accepted shall be deposited with the municipality or the county, as the case may be, in a special, non-reverting plan commission fund to be

available for expenditures by the plan commission for the purpose designated by the source. The fiscal officer of the municipality or the county shall draw warrants against the special, non-reverting fund only on vouchers signed by the president and secretary of the commission.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-311

Sec. 311. (a) ADVISORY. The advisory plan commission may appoint, prescribe the duties, and fix the compensation of such employees as are necessary for the discharge of the duties of the commission. This compensation must be in conformity with salaries and compensation fixed up to that time by the fiscal body of the municipality or county, as the case may be. The commission may contract for special or temporary services and any professional counsel.

(b) **AREA.**

(1) Except as provided in Subdivision (2), the area plan commission shall appoint an executive director for the planning department and fix the director's compensation. To be qualified for the position, the executive director must have training and experience in the field of planning and zoning. The commission may not consider political affiliation in the appointment of the executive director.

(2) This subdivision applies to an area plan commission of a county in which the largest city has a population of less than twenty-five thousand (25,000) or to a county that has no cities. When there is a vacancy in the position of executive director of the planning department, the area plan commission shall give to the county commissioners the name of a person recommended for the position. The county commissioners shall appoint an executive director who may be the person recommended by the area plan commission. The county commissioners may remove the executive director. The county commissioners shall fix the director's compensation. To be qualified for the position, an executive director must have training and experience in the field of planning and zoning. In making the appointment, the county commissioners may not give any consideration to political affiliation of the executive director.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.18; P.L.260-1993, SEC.1.

IC 36-7-4-312

Sec. 312. AREA. Under the direction of the area planning commission, the executive director shall

(1) propose annually a plan for the operation of the planning department;

(2) administer the plan as approved by the commission;

(3) supervise the general administration of the planning department;

(4) keep the records of the planning department and be responsible for the custody and preservation of all papers and documents of the planning department;

(5) subject to the approval of the commission, appoint and remove the employees of the planning department, according to the standards and qualifications fixed by the commission and without regard to political affiliation;

(6) prepare and present to the commission an annual report; and

(7) perform such other duties as the commission may direct.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-400

This series (Sections 400 through 499 of this chapter) may be cited as follows: 400 SERIES.COMMISSION DUTIES AND POWERS.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-401

Sec. 401. (a) Each plan commission shall

(A) supervise, and make rules for, the administration of the affairs of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission or a metropolitan development commission);

(B) prescribe uniform rules pertaining to investigations and hearings;

(C) keep a complete record of all the departmental proceedings;

(D) record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission or the metropolitan development commission);

(E) prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter;

(F) adopt a seal; and

(G) certify to all official acts.

(b) **ADVISORY. AREA.** Each plan commission shall

(A) supervise the fiscal affairs of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission); and

(B) prepare and submit an annual budget in the same manner as other departments of county or municipal government, as the case may be, and be

limited in all expenditures to the provisions made for the expenditures by the fiscal body of the county or municipality.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-402

Sec. 402. (a) **ADVISORY.** Each advisory plan commission shall prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the commission, which compensation must conform to salaries and compensations fixed before that time by the fiscal body of the county or municipality, as the case may be. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission is necessary.

(b) **AREA.** Each area plan commission shall prescribe the qualifications of, and with the consent of the executive director, fix the compensation of the employees of the planning department which compensation must conform to salaries and compensations fixed before that time by the county fiscal body. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission or the board of zoning appeals is required by the area planning law.

(c) **METRO.** The metropolitan development commission shall delegate authority to employees of the department of metropolitan development to perform all ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by the metropolitan development law.

(d) The planning commission may designate a hearing examiner or a committee of the commission to conduct any public hearing required to be held by the commission. Such a hearing must be held upon the same notice and under the same rules as a hearing before the entire commission, and the examiner or committee shall report findings of fact and recommendations for decision to the commission. The commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations, and if any exception is filed in accordance with those rules, the commission shall hold the prescribed hearing. If no exception is filed, the commission shall render its decision without further hearing.

(e) **METRO.** The metropolitan development commission may designate a historic preservation commission created under IC 36-7-11.1-3 to conduct the public hearing required to be held by the metropolitan development commission under the 600 series of this chapter relative to the territory included in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing must be held upon the same notice and under the same rules as a hearing before the metropolitan development commission. The historic preservation

commission shall report to the metropolitan development commission the historic preservation commission's findings of fact and recommendations for decision. The metropolitan development commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations. If an exception is filed in accordance with the rules, the metropolitan development commission shall hold the prescribed hearing. If an exception is not filed, the metropolitan development commission shall render a decision without further hearing. However, this subsection does not eliminate the need for a historic preservation commission to issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the approval of a rezoning by the metropolitan development commission.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.19; P.L.321-1995, SEC.1.

IC 36-7-4-404

Sec. 404. (a) **ADVISORY.** Each advisory plan commission shall sue and be sued collectively by its legal name, styled according to the municipality or county, "_____ Plan Commission," with service of process on the executive director or the president of the commission. No costs may be taxed against the commission or any of its members in any action.

(b) **AREA.** Each area plan commission shall sue and be sued collectively by its legal name, styled "The Area Plan Commission of _____ County" or a similar title adopted by official resolution of the commission, with service of process on the executive director or by leaving a copy at the office of the commission.

No costs may be taxed against the commission or any of its members in any action.

(c) **METRO.** The metropolitan development commission shall sue and be sued collectively by its legal name, styled "The Metropolitan Development Commission of _____ County," with service of process on the director of the department of metropolitan development or by leaving a copy at the office of the department.

No costs may be taxed against the commission or any of its members in any action.

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.192-1984, SEC.9.

IC 36-7-4-405

Sec. 405. (a) **ADVISORY. AREA.** Each plan commission shall

(1) make recommendations to the legislative body or bodies concerning:

(A) the adoption of the comprehensive plan and amendments to the comprehensive plan;

(B) the adoption or text amendment of

(i) an initial zoning ordinance;

(ii) a replacement zoning ordinance; and

(iii) a subdivision control ordinance;

(C) the adoption or amendment of a PUD district ordinance (as defined in Section 1503 of this chapter); and

(D) zone map changes; and

(2) render decisions concerning and approve plats, replats, and amendments to plats of subdivisions under the 700 series of this chapter.

(b) Each plan commission

(1) shall assign street numbers to lots and structures;

(2) shall renumber lots and structures; and

(5) if the plan commission does not have the power under an ordinance adopted under Subsection (c) to name or rename streets, may recommend the naming and renaming of streets to the executive.

(c) The executive shall name or rename streets. However, a unit may provide by ordinance that the plan commission rather than the executive shall name or rename streets. Streets shall be named or renamed so that their names are easy to understand and to avoid duplication or conflict with other names. The plan commission may, by rule, prescribe a numbering system for lots and structures.

(d) This subsection applies to a plan commission having jurisdiction in a county with a population of at least four hundred thousand (400,000). The plan commission shall number structures on highways within the plan commission's jurisdiction to conform with the numbers of structures on streets within cities in the county.

(e) This subsection applies to unincorporated areas subject to the jurisdiction of no plan commission under this article. The county executive:

(1) must approve the assignment of street numbers to lots and structures; and

(2) may number or renumber lots and structures and name or rename streets.

(f) This subsection applies to areas located within a municipality that are subject to the jurisdiction of no plan commission under this article. The executive of the municipality

(1) must approve the assignment of street numbers to lots and structures; and

(2) may number or renumber lots and structures and name or rename streets.

(g) An executive acting under Subsection (e) or (f) shall name or rename streets

(1) so that their names are easy to understand; and

(2) to avoid duplication or conflict with other names.

(h) If streets are named or renamed or lots and structures are numbered or renumbered under this section, the commission or executive that makes the naming or numbering decision shall notify

- (1) the circuit court clerk or board of registration;
- (2) the administrator of the enhanced emergency telephone system established under IC 36-8-16, if any;
- (3) the United States Postal Service; and
- (4) any person or body that the commission or executive considers appropriate to receive notice; of its action no later than the last day of the month following the month in which the action is taken.

(i) Each plan commission shall make decisions concerning development plans and amendments to development plans under the 1400 series of this chapter, unless the responsibility to render decisions concerning development plans has been delegated under Section 1402(c) of this chapter.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.21; P.L.13-1988, SEC.21; P.L.119-1989, SEC.2; P.L.260-1993, SEC.2; P.L.320-1995, SEC.4.

IC 36-7-4-409

Sec. 409. Each planning commission may, within its approved budget, negotiate for grants-in-aid and agree to terms and conditions attached to them. This section is specific authority to enter into grants-in-aid agreements under 40 U.S.C. Section 461. Under the same limitations, the commission may enter into grants-in-aid agreements under that act as amended and any other act relating to planning and zoning.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.24.

Board of Zoning Appeals (BZA)

To ensure fair and equitable implementation of a zoning ordinance, IC 36-7-4-901 requires an advisory planning commission to be supported by a board of zoning appeals (BZA), which is critical to the appeals process. The local government legislative body establishes the BZA within the zoning ordinance. Membership varies depending upon the type of planning law that governs in the particular situation. The BZA is responsible for adopting rules governing the filing of appeals, application for variances, notices, hearings, and related matters (IC 36-7-4-916). Rules adopted by the BZA are to be published and made available to all applicants and interested persons.

Indiana code regulates the BZA under IC 36-7-4. Relevant portions of this code are listed below.

IC 36-7-4

IC 36-7-4-900

Sec. 900. This series (Sections 900 through 999 of this chapter) may be cited as follows: 900 SERIES.BOARD OF ZONING APPEALS.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-901

Sec. 901. (a) As a part of the zoning ordinance, the legislative body shall establish a board of zoning appeals.

(b) The board of zoning appeals is composed of one (1) division, unless the zoning ordinance is amended under this subsection. Whenever considered desirable, the zoning ordinance may be amended to establish an additional one (1), two (2), or three (3) divisions of the board of zoning appeals.

(c) After January 1, 1984, whenever any divisions of the board of zoning appeals are established or reestablished by the zoning ordinance, the ordinance must provide for each division to consist of five (5) members appointed in accordance with Section 902 of this chapter.

(d) The board of zoning appeals shall be known as

(1) the advisory board of zoning appeals (under the advisory planning law);

(2) the area board of zoning appeals (under the area planning law); or

(3) the metropolitan board of zoning appeals (under the metropolitan development law).

(e) Except as provided in this section, a board of zoning appeals has territorial jurisdiction over all the land subject to the zoning ordinance, and if the board has more than one (1) division, all divisions have concurrent jurisdiction within that territory.

(f) **ADVISORY. AREA.** The zoning ordinance may provide that any additional division of the board of zoning appeals, having been established under Subsection (b), is to have only limited territorial jurisdiction. The zoning ordinance must describe the limits of that division's territorial jurisdiction and specify whether that division has exclusive or concurrent jurisdiction within that territory.

(g) **METRO.** Any municipal board of zoning appeals that was established by an excluded city under IC 18-7-2-61 (before its repeal on September 1, 1981) continues as the board of zoning appeals for that municipality. A board of zoning appeals for an excluded city has exclusive territorial jurisdiction within the corporate boundaries of that municipality. All divisions of the metropolitan board of zoning appeals have concurrent territorial jurisdiction throughout the remainder of the county. The legislative body of the consolidated city may

adopt ordinances to regulate the time of the meetings and the voting procedures of the metropolitan board of zoning appeals.

(h) ADVISORY. Any board of zoning appeals that was established under IC 18-7-3-11 continues as the board of zoning appeals for that jurisdiction, until otherwise provided by the zoning ordinance.

(i) AREA. Any board of zoning appeals that was established under the advisory planning law and continued in existence under the area planning law continues as the board of zoning appeals for that jurisdiction, until otherwise provided by the zoning ordinance.

(j) AREA. Any board of zoning appeals that was established under the area planning law as a seven (7) member board continues as the area board of zoning appeals, until otherwise provided by the zoning ordinance.

(k) METRO. The zoning ordinance may provide that a historic preservation commission created under IC 36-7-11.1-3 may exercise the powers of a board of zoning appeals within a historic area or historic zoning district established under IC 36-7-11.1-6. However, this subsection does not eliminate the need for a historic preservation commission to issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the approval of a variance by either

(1) a board of zoning appeals; or

(2) a historic preservation commission exercising the powers of a board of zoning appeals.

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.1; P.L.3-1990, SEC.125; P.L.321-1995, SEC.4; P.L.164-1995, SEC.20.

IC 36-7-4-902

Sec. 902. (a) ADVISORY. Each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the executive of the municipality or county, of whom one (1) must be a member of the plan commission and two (2) must not be members of the plan commission

(2) One (1) citizen member appointed by the fiscal body of the municipality or county, who must not be a member of the plan commission

(3) One (1) member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under Subdivision (1)

(b) ADVISORY. In each county having a metropolitan plan commission, Subsection (a) does not apply. In such a county, each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Two (2) members, of whom no more than one (1) may be of the same political party, appointed by the county legislative body

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) only of these members must be a member of the plan commission

(c) AREA. When the area board of zoning appeals was established before January 1, 1984, as a seven (7) member board, the board consists of seven (7) members as follows:

(1) Two (2) citizen members appointed by the area plan commission from its membership, one (1) of whom must be a municipal representative and the other must be a county representative

(2) Three (3) citizen members, who may not be members of any plan commission, appointed by the executive of the largest municipality in the county.

However, if there are two (2) or more municipalities having a population of at least twenty thousand (20,000) in the county, the executive of the largest municipality shall appoint two (2) citizen members and the executive of the second largest municipality shall appoint one (1) citizen member. Furthermore, if there are no cities in the county participating in the commission, then the three (3) members appointed under this subdivision shall be appointed as follows:

(A) One (1) member appointed by the county executive

(B) One (1) member appointed by the county fiscal body

(C) One (1) member appointed by the legislative bodies of those towns participating in the commission

(3) Two (2) citizen members, who may not be members of any plan commission, appointed by the county legislative body

(d) AREA. Except as provided in Subsection (c), each division of the area board of zoning appeals consists of five (5) members as follows:

(1) One (1) citizen member appointed by the area plan commission from its membership

(2) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the largest municipality in the county participating in the commission

(3) Two (2) citizen members, of whom one (1) must be a member of the area plan commission and one (1) must not be a member of any plan commission, appointed by the county legislative body

(4) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the second largest municipality in the

county participating in the commission. However, if there is only one (1) municipality in the county participating in the commission, then the county legislative body shall make this appointment.

(e) METRO. Each division of the metropolitan board of zoning appeals consists of five (5) members as follows:

(1) Two (2) citizen members appointed by the executive of the consolidated city

(2) Two (2) citizen members appointed by the legislative body of the consolidated city

(3) One (1) citizen member, who may also be a member of the metropolitan development commission, appointed by the commission

(f) METRO. The municipal board of zoning appeals for an excluded city consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the legislative body of the excluded city

(2) Two (2) citizen members, who may also be members of the metropolitan development commission, appointed by the commission

(g) Whenever the zoning ordinance provides for a certain division of the board of zoning appeals to have limited territorial jurisdiction, it must also provide for that division to consist of members who are all residents of that limited territory. Those members shall be appointed in the same manner that is prescribed by Subsection (a) for divisions of an advisory board of zoning appeals, but if the plan commission is unable to make its appointment in that manner, the appointment shall be made instead by the legislative body.

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.2; P.L.320-1995, SEC.12.

IC 36-7-4-916

Sec. 916. (a) The board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance, concerning

- (1) the filing of appeals;
- (2) the application for variances, special exceptions, special uses, contingent uses, and conditional uses;
- (3) the giving of notice;
- (4) the conduct of hearings; and
- (5) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).

(b) The board of zoning appeals may also adopt rules providing for

- (1) the allocation of cases filed among the divisions of the board of zoning appeals; and
- (2) the fixing of dates for hearings by the divisions.

(c) Rules adopted by the board of zoning appeals shall be printed and be made available to all applicants and other interested persons.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.47; Acts 1982, P.L.212, SEC.4; P.L.357-1983, SEC.8.

IC 36-7-4-918.1

Sec. 918.1. A board of zoning appeals shall hear and determine appeals from and review

(1) any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;

(2) any order, requirement, decision, or determination made by an administrative board or other body except a planning commission in relation to the enforcement of the zoning ordinance; or

(3) any order, requirement, decision, or determination made by an administrative board or other body, except a plan commission, in relation to the enforcement of an ordinance adopted under this chapter requiring the procurement of an improvement location or occupancy permit.

As added by P.L.357-1983, SEC.10.

IC 36-7-4-918.2

Sec. 918.2. A board of zoning appeals shall approve or deny all

- (1) special exceptions;
- (2) special uses;
- (3) contingent uses; and
- (4) conditional uses

from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance. The board may impose reasonable conditions as a part of its approval.

As added by P.L.357-1983, SEC.11.

IC 36-7-4-918.3

YAMD.1983

Sec. 918.3. AREA. Neither the area board of zoning appeals nor any other board of zoning appeals continued in existence under the area planning law may grant a variance from a use district or classification under the area planning law.

As added by P.L.357-1983, SEC.12.

IC 36-7-4-918.4

Sec. 918.4. ADVISORY.METRO. A board of zoning appeals shall approve or deny variances of use from the terms of the zoning ordinance. The board may impose reasonable conditions as a part of its approval.

A variance may be approved under this section only upon a determination in writing that

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- (3) the need for the variance arises from some condition peculiar to the property involved;
- (4) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- (5) the approval does not interfere substantially with the comprehensive plan adopted under the 500 series of this chapter.

As added by P.L.357-1983, SEC.13.

IC 36-7-4-918.5

Sec. 918.5. A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A variance may be approved under this section only upon a determination in writing that

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- (3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

As added by P.L.357-1983, SEC.14.

IC 36-7-4-918.6

Sec. 918.6. (a) This section applies to a county having a population of

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

(b) ADVISORY. AREA. Notwithstanding Sections 918.2, 918.4, and 918.5 of this chapter, a zoning or subdivision control ordinance shall require that the board of zoning appeals submit any of the following petitions to the legislative body for approval or disapproval:

- (1) Special exceptions
- (2) Special uses
- (3) Use variances

(c) ADVISORY. AREA. The board of zoning appeals shall file a petition under this section with the clerk of the legislative body with

- (1) a favorable recommendation;
- (2) an unfavorable recommendation; or
- (3) no recommendation.

(d) ADVISORY. AREA. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the petition at its first regular meeting after the board of zoning appeals files its recommendation.

(e) ADVISORY. AREA. A petition is granted or denied when the legislative body votes on the petition as follows:

(1) In a county described in Subsection (a)(1), the legislative body shall vote on the petition within ninety (90) days after the board of zoning appeals makes its recommendation. If the legislative body does not vote to deny the petition within ninety (90) days, the petition is considered approved.

(2) In a county described in Subsection (a)(2), the legislative body shall vote on the petition within sixty (60) days after the board of zoning appeals makes its recommendations. If the legislative body does not vote to deny the petition within sixty (60) days, the petition is approved.

(f) ADVISORY. AREA. If the legislative body approves a petition, it must make the determination in writing as required under Section 918.2, 918.4, or 918.5 of this chapter or as required by the zoning ordinance.

As added by P.L.304-1989, SEC.1. Amended by P.L.12-1992, SEC.164; P.L.167-1994, SEC.2.

IC 36-7-4-918.8

Sec. 918.8. (a) METRO. In connection with its consideration of a proposed ordinance for the amendment of the zoning ordinance proposed under Section 607(c)(2) of this chapter, the metropolitan development commission may exercise the powers of the metropolitan board of zoning appeals for the purpose of approving or denying

- (1) a variance from the development standards of the zoning ordinance; or
- (2) a special exception, special use, contingent use, or conditional use from the terms of the zoning ordinance.

(b) METRO. The commission may, by rule, establish procedures so that the power of the commission to recommend amendment of zoning ordinances and the power of the commission to approve and deny these variances, exceptions, and uses may be exercised concurrently. These rules may be inconsistent with the 900 series to the extent reasonably necessary to allow the commission to exercise the power to approve or deny these variance, exception, and use petitions.

(c) METRO. When acting under this section, the commission may

(1) vote on the amendment to the zoning ordinance and the variance, exception, or use petition at the same time; and

(2) condition the approval of variance, exception, or use in such a manner that it takes effect when the recommended ordinance amendment is approved by the legislative body.

(d) METRO. Section 922 of this chapter does not apply to variances, exceptions, and uses approved under this section.

As added by P.L.357-1983, SEC.15.

Steps in the Planning Process

This section reviews the basics of the planning and decision-making process. Those just getting started in this area may find this information helpful to use as a checklist while they go through the planning process. Others will benefit by refreshing their memories on the basics of planning and by discovering how one can break it down for virtually any type of project. The following figure shows the procedure a decision maker employs in following a rational transportation-planning model.

The decision maker adhering to this rational model would seek to:

- understand the context for decision making by identifying and weighing societal values and goals;
- establish operational objectives for the specific problem area under consideration;
- identify all possible alternatives; and
- evaluate all the consequences of each alternative, selecting the one whose probable consequences maximize the likelihood of achieving the specified goals.

- **Determine the mission and goals**
- **Mission analysis to develop problems and to identify objectives and tasks**
- **Develop alternative courses of action**
- **Evaluate alternative courses of action**
- **Consider the internal and external environment**
- **Decide. Select the best course of action and begin planning execution**

Figure 5-1. Steps in the Planning Process

The Components of Decision Making

Decisions must be made throughout the transportation planning process. Within the Context of Figure 5-2 (below), four components of decision making are useful to understand:

1. Problem Identification and/or Definition

How a planner identifies and perceives a transportation problem is important. In the past, planners considered the urban transportation problem to be almost exclusively one of congestion. Today, modern planners see the problem expanded to include air quality, equity, safety, congestion, land-use impact, noise, and more. All parties involved in solving a transportation problem should have a clear understanding of all of its elements.

2. Debate and Choice

Because limited resources require transportation planners to make choices, debating and deciding among available options often generates tension and conflict. Bargaining, considering alternatives, adjusting to existing situations, and searching for consensus often characterize the decision-making process. Yet one must assume that decision makers act rationally within the constraints posed by their political and physical resources.

3. Implementing a Solution

Implementing the final decision on how best to solve a transportation problem often implies a politics of cooperation. The implementation of plans and programs cannot occur until specific projects are scheduled. That, in turn, requires a determination on which projects should receive funding. Thus, budgeting comes into play in achieving the final objectives and goals of any problem-solving decision.

4. Evaluation and Feedback

Sometimes actions taken to solve a transportation problem do not always achieve the results for which they were intended. Transportation planners must closely monitor the implementation of their solutions to correct any distortions that might occur along the way. Attentive monitoring of the implementation stage of a transportation solution also provides information to management teams so they can make better decisions at each stage toward a project's completion. Feedback is important to good execution of a transportation solution, and monitoring can gain this advantage for management in formal as well as informal ways.

Social Aspects of Transportation Planning

Local communities, even smaller ones, are diverse places, so transportation planners are required to serve many constituencies. Although social and physical planning are

professionally separate, one can argue that planning at its best takes into account the social impact of any proposed land use as well as its implications for economic development. Transportation planners must continue to recognize the demographic diversity of the population they serve: the households of non-families, single-parent families, and people who live alone (See Chapter 11, Social Aspects of Physical Planning, ICMA.. So and Getzels 1988).

Social planners are concerned with social equity and therefore tend to focus on two overlapping groups. The first consists of those who are to some extent dependent on others, such as children or people who are poor, unemployed, handicapped, or elderly. The second group consists of those who suffer discrimination for social or political reasons, such as minorities, women, the elderly, and handicapped.

Planners should consider that various locations serve as facilities for the handicapped. Such people often live in homes within residential areas, not just in large institutions. They must also examine the implications of the demographic composition of a community. Different population groups have different needs that can affect land use, housing, or transportation patterns

- **Includes the steps of decision making and the planning process.**
- **Takes time and deliberation to include community involvement in the process.**
- **Matrix includes diagnosis and data management, analysis and evaluation, scheduling and budgeting, and monitoring.**
- **Includes and takes account of technology, economics and sociology inputs.**
- **Requires a more sophisticated and involved analysis of all facets of transportation planning.**
- **The product is both a short range and a long range plan-examples are:**
 - **Industrial and community development plans**
 - **Transportation plans, to include transit, traffic and access management inter alia**
 - **Supporting plans**

Figure 5-2. Guidelines for a Decision Oriented Transportation Planning Process

Needs Assessment

A needs assessment is an important first step in developing policy measures to deal with the problems of a particular demographic group. A community's assessment may involve the active participation of people who live there, surveys, and the use of social indicators.

Participatory methods of assessing a community's transportation needs may make use of meetings, such as public hearings, where affected groups can present their concerns directly to staff and policy makers. Another popular format for gathering public input is a structured group meeting. The advantage of the participatory method of assessing a community's needs is that people affected by transportation policies and decisions have an opportunity to express their opinions directly to the decision makers. The primary disadvantage is that some people are less likely to participate than others. People who are not politically aware, some members of minority groups, or others who may feel shamed by their economic, mental, or physical problems are likely to stay home.

Similarly, the methods of gathering information by taking surveys or researching social indicators have their own advantages and disadvantages. Although neither method gives the public a direct way to participate in the decision-making process, the survey method does ask respondents directly about their transportation needs. Social indications are taken from data collected routinely by government or private groups, such as the census and other housing and income data that respondents provide in government or commercial surveys.

The Resulting Plan

After the commissioners complete their research and analysis, they will likely write a comprehensive plan. Within that plan is the thoroughfare plan, the transportation element of the unit's comprehensive plan.

The Comprehensive Plan

Preparation of a comprehensive plan is the core responsibility of a planning commission. The value of a comprehensive plan, however, lies not in its preparation or adoption. The real measure of its success is whether the end result—the plan's implementation—has improved the quality of life enjoyed by the residents of a community. Thus, a comprehensive plan is a tool for community leadership and can be evaluated by answering some key questions:

- Is the plan realistic?
- Is the plan comprehensive?
- Is the plan specific?
- Is the plan linked to related functions?
- Does the plan link public and private interests?
- Is the plan citizen-focused?

- Is the plan understandable?
- Does the plan focus on specific problems and solutions?
Is the plan change-specific?
- Is the plan current?

Comprehensive planning is addressed in the statutes in **IC 36-7-4** in the 500 series thus: "A comprehensive plan shall be approved by resolution in accordance with the 500 series for the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development. The planning commission shall prepare the comprehensive plan." **IC 36-7-4-501**.

Indiana statutes both mandate and permit transportation planning bodies to form and implement the content of a comprehensive plan. **IC 36-7-4-502** directs that the content of a comprehensive plan should contain the following items:

- A statement of the objectives for future development of the jurisdiction
- A statement of policy for land use development in the jurisdiction
- A statement of the policy for development of public ways, public utilities, public lands, public structures, and public places.

IC 36-7-4-503 states that comprehensive plans may also include

- surveys and studies of current and probable growth;
- maps, plats, charts, and descriptive material presenting basic information (See **IC 36-7-4-503 (2)** for a complete list of information that can be included.);
- a short- and long-range development program of public works projects for the purpose of stabilizing industry and employment and for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects;
- a short- and long-range capital improvements program of governmental expenditures so that the development policies established in the comprehensive plan can be carried out and kept up-to-date for all separate taxing districts within the jurisdiction of the planning body to ensure efficient and economic use of public funds; and
- a short- and long-range plan for the location, general design, and assignment of priority for construction of thoroughfares in the jurisdiction. The thoroughfares must have the purpose of providing a system of major public ways that allows effective vehicular movement, encourages effective use of land, and makes economic use of public funds.

The following statutes in **IC 36-7-4** pertain to comprehensive planning.

IC 36-7-4

IC 36-7-4-500

Sec. 500. This series (Sections 500 through 599 of this chapter) may be cited as follows: 500 SERIES.COMPREHENSIVE PLAN.

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-501

Sec. 501. A comprehensive plan shall be approved by resolution in accordance with the 500 series for the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development. The plan commission shall prepare the comprehensive plan.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.26; P.L.335-1985, SEC.3.

IC 36-7-4-502

Sec. 502. A comprehensive plan must contain at least the following elements:

- (1) A statement of objectives for the future development of the jurisdiction
- (2) A statement of policy for the land use development of the jurisdiction
- (3) A statement of policy for the development of public ways, public places, public lands, public structures, and public utilities

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.27; P.L.335-1985, SEC.4.

IC 36-7-4-503

Sec. 503. A comprehensive plan may, in addition to the elements required by Section 502 of this chapter, include the following:

- (1) Surveys and studies of current conditions and probable future growth within the jurisdiction and adjoining jurisdictions
- (2) Maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:
 - (A) History, population, and physical site conditions
 - (B) Land use, including the height, area, bulk, location, and use of private and public structures and premises

- (C) Population densities
 - (D) Community centers and neighborhood units
 - (E) Blighted areas and conservation areas
 - (F) Public ways, including bridges, viaducts, subways, parkways, and other public places
 - (G) Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes
 - (H) Air, land, and water pollution
 - (I) Flood control and irrigation
 - (J) Public and private utilities, such as water, light, heat, communication, and other services
 - (K) Transportation, including rail, bus, truck, air and water transport, and their terminal facilities
 - (L) Local mass transit, including taxicabs, buses, and street, elevated, or underground railways
 - (M) Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public places of a recreational nature
 - (N) Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings
 - (O) Education, including location and extent of schools, colleges, and universities
 - (P) Land utilization, including agriculture, forests, and other uses
 - (Q) Conservation of energy, water, soil, and agricultural and mineral resources
 - (R) Any other factors that are a part of the physical, economic, or social situation within the jurisdiction
- (3) Reports, maps, charts, and recommendations setting forth plans and policies for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations (set out in Subdivision (2) of this section) of the jurisdiction so as to substantially accomplish the purposes of this chapter
- (4) A short and long-range development program of public works projects for the purpose of stabilizing industry and employment and for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects
- (5) A short and long-range capital improvements program of governmental expenditures so that the development policies established in the comprehensive plan can be carried out and kept up-to-date for all separate taxing districts within the jurisdiction to assure efficient and economic use of public funds
- (6) A short and long-range plan for the location, general design, and assignment of priority for construction of thoroughfares in the jurisdiction for the purpose of

providing a system of major public ways that allows effective vehicular movement, encourages effective use of land, and makes economic use of public funds

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.28; P.L.335-1985, SEC.5; P.L.220-1986, SEC.9.

IC 36-7-4-507

Sec. 507. Before the approval of a comprehensive plan, the planning commission must

- (1) give notice and hold one (1) or more public hearings on the plan;
- (2) publish, in accordance with IC 5-3-1, a schedule stating the times and places of the hearing or hearings. The schedule must state the time and place of each hearing and state where the entire plan is on file and may be examined in its entirety for at least ten (10) days before the hearing.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.18; P.L.335-1985, SEC.9.

IC 36-7-4-508

Sec. 508. (a) After a public hearing or hearings have been held, the planning commission may approve the comprehensive plan.

(b) **ADVISORY. AREA.** Upon approval, the plan commission shall certify the comprehensive plan to each participating legislative body.

(c) The plan commission may approve each segment of the comprehensive plan as it is completed. However, that approval does not preclude future examination and amendment of the comprehensive plan under the 500 series.

(d) **METRO.** As used in this subsection, "comprehensive plan" or "plan" includes any segment of a comprehensive plan. Approval of the comprehensive plan by the metropolitan development commission is final. However, the commission may certify the comprehensive plan to the legislative body of each municipality in the county, to the executive of the consolidated city, and to any other governmental entity that the commission wishes. The commission shall make a complete copy of the plan available for inspection in the office of the plan commission. One (1) summary of the plan shall be recorded in the county recorder's office. The summary of the plan must identify the following:

- (1) The major components of the plan
- (2) The geographic area subject to the plan, including the townships or parts of townships that are subject to the plan
- (3) The date the commission adopted the plan

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.10; P.L.31-1994, SEC.11.

IC 36-7-4-509

Sec. 509. (a) ADVISORY. AREA. After certification of the comprehensive plan, the legislative body may adopt a resolution approving, rejecting, or amending the plan. Such a resolution requires only a majority vote of the legislative body, and is not subject to approval or veto by the executive of the adopting unit, and the executive is not required to sign it.

(b) ADVISORY. AREA. The comprehensive plan is not effective for a jurisdiction until it has been approved by a resolution of its legislative body. After approval by resolution of the legislative body of the unit, it is official for each unit that approves it. Upon approval of the comprehensive plan by the legislative body, the clerk of the legislative body shall place one (1) copy of the comprehensive plan on file in the office of the county recorder.

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.11; P.L.220-1986, SEC.12.

IC 36-7-4-510

Sec. 510. (a) ADVISORY. AREA. If the legislative body, by resolution, rejects or amends the comprehensive plan, then it shall return the comprehensive plan to the plan commission for its consideration with a written statement of the reasons for its rejection or amendment.

(b) ADVISORY. AREA. The commission has sixty (60) days in which to consider the rejection or amendment and to file its report with the legislative body. However, the legislative body may grant the commission an extension of time, of specified duration, in which to file its report. If the commission approves the amendment, the comprehensive plan stands, as amended by the legislative body, as of the date of the filing of the commission's report with the legislative body. If the commission disapproves the rejection or amendment, the action of the legislative body on the original rejection or amendment stands only if confirmed by another resolution of the legislative body.

(c) ADVISORY. AREA. If the commission does not file a report with the legislative body within the time allotted under Subsection (b), the action of the legislative body in rejecting or amending the comprehensive plan becomes final.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.31; P.L.335-1985, SEC.12; P.L.220-1986, SEC.13.

IC 36-7-4-511

Sec. 511. (a) Each amendment to the comprehensive plan must be approved according to the procedure set forth in the 500 series.

(b) ADVISORY. AREA. If the legislative body wants an amendment, it may direct the plan commission to prepare the amendment and submit it in the same

manner as any other amendment to the comprehensive plan. The commission shall prepare and submit the amendment within sixty (60) days after the formal written request by the legislative body. However, the legislative body may grant the commission an extension of time, of specified duration, in which to prepare and submit the amendment.

As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.13; P.L.220-1986, SEC.14.

IC 36-7-4-512

Sec. 512. METRO. This section applies only to capital improvement projects consisting of real or personal property (or improvements) that have a useful life of more than one (1) year and a value of more than one hundred thousand dollars (\$100,000). At least thirty (30) days before a governmental entity within the county

(1) undertakes or acquires any such capital improvement project;

(2) starts the required proceedings to spend money or let contracts for such a project; or

(3) authorizes the issuance of bonds for the purpose of financing such a project; the governmental entity must notify the metropolitan development commission in writing of the location, cost, and nature of the project. The commission may by rule limit the kinds of capital improvement projects that are subject to the notification requirement of this section. The commission may designate an agency responsible for fiscal analyses or control to receive notifications required by this section.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.32; P.L.335-1985, SEC.14.

The Thoroughfare Plan

The thoroughfare plan is the transportation element of the unit's comprehensive plan. Its purpose is to provide for usable routes that connect business, recreation, residential, and industrial areas. A thoroughfare plan is an attempt to provide a working traffic plan and a means of anticipating commercial and residential development. In most comprehensive plans, the thoroughfares are divided into two major classifications: urban and rural.

The term "thoroughfare" is defined in the statutes as, "a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it, such as sidewalks, curbs, shoulders, and utility lines and mains."

Below appears the suggested content and organization of a thoroughfare plan:

- *Introduction.* State the purpose of the plan and provide background information.
- *Definitions.* Provide definitions of jargon that may be used in the thoroughfare plan.
- *Sources of Information.* Explain or reference sources from which the plan was derived (such as TIPs or previous plans).
- *Standards.* Prove consistent and valid standards such as width, classification, urban, rural.
- *Maps and Explanatory Appendices.* Use maps of urban and rural road systems to demonstrate the relationship of existing roads to those that will be built or otherwise improved in the future.

A city works board, board of county commissioners, or town board, as appropriate, holds the power to carry out thoroughfare plan projects. Such boards execute their power by adopting a resolution that describes the project, conducting a public hearing, and making decisions.

IC 36-4-506 and IC 36-9-6.1 discuss the thoroughfare plan.

IC 36-7-4

IC 36-7-4-506

Sec. 506. (a) A thoroughfare plan that is included in the comprehensive plan may determine lines for new, extended, widened, or narrowed public ways in any part of the territory in the jurisdiction.

(b) The determination of lines for public ways, as provided in Subsection (a), does not constitute the opening, establishment, or acceptance of land for public way purposes.

(c) After a thoroughfare plan has been included in the comprehensive plan, thoroughfares may be located, changed, widened, straightened, or vacated only in the manner indicated by the comprehensive plan.

(d) After a thoroughfare plan has been included in the comprehensive plan, the plan commission may recommend to the agency responsible for constructing thoroughfares in the jurisdiction the order in which thoroughfare improvements should be made.

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.30; P.L.335-1985, SEC.8; P.L.220-1986, SEC.11.

IC 36-9-6.1

IC 36-9-6.1-1

Sec. 1. This chapter applies to each unit that

(1) has established an advisory plan commission or a metropolitan plan commission under IC 36-7-4-202; or

(2) is participating in an area planning department established under IC 36-7-4-202.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-3

Sec. 3. Except as provided in Section 5 of this chapter, a works board carrying out a thoroughfare plan under this chapter

(1) has the same powers to

(A) appropriate or condemn property;

(B) lay out, change, widen, straighten, or vacate public ways or public places;

(C) award and pay damages; and

(D) assess and collect benefits;

(2) shall proceed in the same manner; and

(3) is subject to the same rights of property owners, including the right to appeal; as a works board that appropriates property under IC 32-11 and lays out, changes, widens, straightens, or vacates public ways or public places under IC 36-9-6.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-4

Sec. 4. A works board that wants to proceed with a project to carry out a thoroughfare plan may adopt a resolution

(1) describing the proposed project;

(2) setting out the items necessary for completion of the project;

(3) including complete plans and specifications for all parts of the project other than the appropriation of property;

(4) including an estimate by the civil engineer of the unit of the total cost of the project; and

(5) describing the property benefited by the project, if any, that will be subject to assessment for that benefit.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-5

Sec. 5. Plans, specifications, and contracts for a project proposed under Section 4 of this chapter must be prepared, adopted, and let in the manner required by IC 36-9-36, except that the provisions of IC 36-9-36 for remonstrance by resident freeholders do not apply. Separate phases of a project may be included in separate plans and specifications, and the work on separate phases may be done by contract or otherwise, as separate improvements.

As added by P.L.220-1986, SEC.30. Amended by P.L.98-1993, SEC.12.

IC 36-9-6.1-6

Sec. 6. Projects proposed under Section 4 of this chapter may include

- (1) the appropriation of property;
- (2) the opening, changing, widening, straightening, or vacating of any public way, public way crossing, railway, right-of-way, or public place in the unit;
- (3) the removal of any pavement, sidewalk, curb, parkway, building, or other structure;
- (4) the grading of any public way or public place; or
- (5) the construction or reconstruction of any pavement, street, sidewalk, curb, or structure.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-7

Sec. 7. After publication of notice in accordance with IC 5-3-1, the works board shall hold a public hearing on the resolution adopted under Section 4 of this chapter. The notice must

- (1) fix the date of the hearing;
- (2) state that the resolution will be considered at the hearing; and
- (3) state that persons interested in or affected by the proposed project may speak at the hearing.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-8

Sec. 8. At the hearing under Section 7 of this chapter, the works board shall consider objections to the proposed project and, if it decides to proceed with the project, shall

- (1) determine what part of the cost of the project or any separate phase of the project, including damages increased by a court on appeal, shall be paid by the unit out of the thoroughfare fund as a benefit to the unit at large;
- (2) determine what part, if any, of the cost of the project or any separate phase of the project, including

damages awarded by the works board, shall be assessed as benefits on the real property within a special benefit district, and fix the boundaries of that district; and

(3) take final action, which is conclusive on all persons, confirming, modifying, or rescinding its original resolution.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-9

Sec. 9. If the works board approves a project and decides to assess a part of the cost of that project against the property specially benefited, the board shall

- (1) advertise for bids;
- (2) let contracts; and
- (3) assess costs;

for the whole project or separate phases of the project, in the manner prescribed by IC 36-9-36.

As added by P.L.220-1986, SEC.30. Amended by P.L.98-1993, SEC.13.

IC 36-9-6.1-10

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Sec. 10. The owners of property affected by an assessment under Section 9 of this chapter have the same rights as property owners affected by an assessment under IC 36-9-36.

As added by P.L.220-1986, SEC.30. Amended by P.L.98-1993, SEC.14.

IC 36-9-6.1-11

Sec. 11. If a unit's costs in acquiring property and paying benefits assessed against the unit under this chapter exceed the balance in the unit's thoroughfare fund, the unit may issue bonds in an amount sufficient to pay all or part of those costs. The bonds must be

- (1) approved by the executive of the unit;
- (2) authorized by ordinance of the fiscal body of the unit; and

(3) issued and sold in the same form and manner, including the same interest rate and maturities, as bonds for general purposes of the unit.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-12

Sec. 12. Proceeds from the sale of bonds under Section 11 of this chapter shall be deposited in the thoroughfare fund and used by the unit to pay for

- (1) property acquired by the unit;
- (2) benefits assessed against the unit at large; and
- (3) damages increased by a court on appeal; under this chapter.

As added by P.L.220-1986, SEC.30.

Access Management

Access management is the planning, design and implementation of land use and transportation strategies that control the flow of traffic between the road and the surrounding land (Flora & Keitt 1982, 1-3). It is an important aspect of planning, and if access management is done properly, it can avoid costly roadway improvements in the future. This section provides an overview to make users aware of the need to consider access management throughout the planning process. .

Often times one cannot predict the extent to which an area will eventually become developed. An example is the ever-popular strip commercial developments that pop up along what was once a farmland road. Although it may be impossible to predict fully the amount of growth an area will develop, one needs to be aware of the possibilities and to allow for access management alternatives so they can be implemented if necessary.

Consider the following four main objectives in managing access:

- Limit the number of conflict points
- Separate basic conflict areas
- Limit deceleration requirements
- Remove turning vehicles or vehicle queues from the through-lanes.

Without access management, the normal chain of events that frequently follows new development leads to a cycle requiring constant investment for roadway improvement (Flora & Keitt, 1982, 3). Consider this scenario: Let's say a new popular retail store opens up along a major traffic artery. The new store attracts customers, so people who might not have used the artery in the past will now use it to gain access to the new store. The increase in traffic to the new store calls for roadway improvements to accommodate the greater number of vehicles. For example, the city might add a new lane. Travelers soon hear of the added capacity, and the road improvements attract even more travelers, resulting once again, in an increase in traffic. In turn, the larger amount of traffic is attractive to more businesses because more people in the area mean more potential customers. Hence, more businesses move into the area and the cycle repeats itself.

However, an increase in traffic volume is not the only factor that generates the need to widen a road or relocate a facility. Rather, the number of potential conflict points among vehicles is the more likely source. Conflict points among vehicles rise as the result of an increasing number of driveways. Vehicles turning in and out of driveways cause a decrease in the road's capacity beyond a specific level of service. Then vehicle delays increase, and safety and overall comfort along the roadway are reduced.

Proper access management can result in many benefits. A well-conceived, comprehensive program can save lives and reduce costs to motorists without resorting to large investments of capital funds for massive reconstruction. By implementing one prescribed traffic management technique, or even a combination of them, safety can be improved, delays reduced, and major capital expenditures postponed or eliminated.

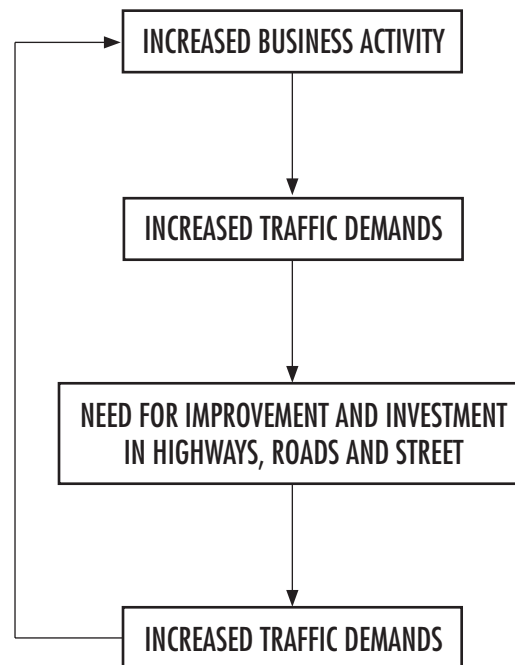


Figure 5-3. Development Cycle Impact on the Need for Roadway Investment. (Based on Flora & Keitt 3,1982)

Questions and Answers About Transportation Planning

Q: What kinds of planning and coordination take place between metropolitan planning organizations, area planning departments and state transportation planning agencies?

Answer: Metropolitan planning organizations (MPOs) are established where authorized. Twelve MPOs exist in Indiana. The Indiana Department of Transportation is required to participate in the efforts of the MPOs to assist in the planning of each urbanized area's transportation system. The aim is to provide for safe and efficient transportation of people and things within the urbanized area boundaries. INDOT must coordinate state plans and programs with MPO plans. MPO long-range plans thus coordinated become components of the state's long-range plan. Local TIP technical coordinating committees provide area planning commissions and their departments with advisory support.

Q: What planning steps can be taken when local governments do not participate in formal planning arrangements?

Answer: Local governments that do not participate with area, advisory, or metropolitan planning organizations do not retain the power to plan land use. (See Chapter 2, Local Authority)

Q: What guidelines are established concerning INDOT's planning activities?

Answer: INDOT's responsibilities are laid out in IC 8-23-2. Some specifics concerning planning are to:

Develop, continuously update, and implement

- long-range comprehensive transportation plans and
- work programs;

Assure orderly development and maintenance of an efficient statewide system of transportation by

- implementing the policies, plans, and work programs adopted by the department and
- carry out public transportation responsibilities, including

- developing and recommending public transportation policies, plans, and work programs;
- providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;
- conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding; and
- receiving and disbursing any state or federal mass transportation funds that are not directly allocated to an urbanized area.

Q: What are the prerequisites for adopting a zoning ordinance?

Answer: A comprehensive plan must be in place before a legislative body can enact a zoning ordinance. (IC 36-7-4-601) Comprehensive plans are to be approved by resolution rather than by ordinance (IC 36-7-4-501). The statutes mandating zoning ordinances are located in IC 36-7-4, the 600 series.

Q: What is a thoroughfare plan?

Answer: The thoroughfare plan is developed as the major transportation element of the unit's comprehensive plan.

Q: What should be the content of a thoroughfare plan?

Answer: A thoroughfare plan that is included in the comprehensive plan may determine lines for new, extended, widened, or narrowed public ways in any part of the territory in the jurisdiction (IC 36-7-4-506). The thoroughfare plan is an attempt to provide a working traffic plan and to anticipate development. The thoroughfare plan can be a composite, which includes those portions of transportation studies that are current.

The thoroughfare plan can incorporate standards from these studies, or it can establish revised standards. The plan can impose width standards, and it can provide for the classification of roads and streets. Where applicable, the thoroughfare plan can encompass the entire transportation system in the jurisdiction.

In its simplest form, the thoroughfare plan can be a map depicting existing and proposed roads and their classification.



Obtaining, Maintaining, and Vacating Right-Of-Way

Introduction

Public road right-of-ways exist today for three reasons: someone either granted or dedicated them to the government; the general public or the government has used them over an extended period of time; or the government took them pursuant to its right of eminent domain. The focus here is on the acquisition of new public road right-of-way and some of the issues relating to existing public road right-of-way. Answering the question of “how that road or street got there” and verifying its legal and administrative status is a continual challenge for local governments. As urbanization increases, right-of-way questions and issues have multiplied as the process has become more complex. A newer and interesting issue surrounds establishment and management of utility easements in the road or street right-of-way. Add to that the requirement for environmental assessments, historic preservation reviews, and other required permits required to comply with federal and state statutes and rules. (See Chapter 13 for environmental and preservation issues.) Vacation of roads, streets, and alleys is required when the right-of-way is no longer needed or restructured. Also important is the disposition of abandoned road right-of-way, ownership, property acquisition and the exercise of the power of eminent domain.

Another important issue is the management and use of railroad right-of-way and the abandonment process and its impact on state and local government. INDOT has a role in monitoring the process, railroad notice requirements, and corridor disposition issues. Stakeholders have an ownership of the outcome of all of these.

Tree in Middle of Dirt Road

Existing local road or street right-of-way may have been established through a variety of acquisition methods. One of the early road building clearing methods was to simply leave large trees for later attention, and maybe not take the time or expense to remove them at all. This early twentieth century photograph of a dirt road with a tree in the middle at one point can be used as an illustration. A search of the available records might reveal that this road was established by use rather than through acquisition of right-of-way as an easement or in fee. Documenting and establishing the nature of right-of-way (legalization) is hard work. Nevertheless, it needs to be done well, an ongoing issue generated by acquisition practices and methods of a bygone era. (Photo courtesy, Tippecanoe County Historical Association)

Importance of Right-Of-Way in the Construction Process

A significant step forward came in 1944 when Congress directed, in the Federal-Aid Highway Act of 1944, that the term “construction” would henceforth include the costs of right-of-way, thus confirming the need to consider acquisition of right-of-way early in the highway planning process (Labatut and Lane 1950, 281-289).

Right-of-way title is commonly conveyed by a general or special warranty deed, a quit claim deed, or by granting a lesser interest, such as an easement. An appraisal, land survey and title search are necessary to guarantee clear and unencumbered title and to ensure that the interest in land acquired for right-of-way is correctly described, documented, and recorded. Defining and legalizing existing right-of-way continues to be a challenge for Indiana’s local street and road officials with new problems occurring every day.

A number of controls and prescriptions accompany federal financial support (administered by the Indiana Department of Transportation) for local street and road projects. The controls and prescriptions range from monitoring and approving construction specifications and accounting procedures to mandating that, under certain conditions, local governments provide relocation assistance for individuals who provide right-of-way by donation, sale, or as a result of eminent domain proceedings. The state government regulations aim to protect both the rights of citizens and the interests of the local government.

In 1989 the Local Assistance Unit of the Division of Land Acquisition, Indiana Department of Transportation (INDOT) took action to improve the management of right-of-way acquisition for federal-aid highway projects. It did so by revising, updating, and publishing the *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*. (INDOT, 1989)

The acquisition process is a major expense for all local governments. Acquisition is lengthy, complicated, and should be a detailed process, following all guidelines set forth within the statutes of Title 32, “Property,” of the Indiana Code. In the field, it is customary for LPA (local public agency) officials to encourage the practice of donating land for right-of-way use. While donations are popular, another method used to lower expenses for the LPA is known as “soft match.” If the LPA acquires right-

of-way, and funding is approved, then 80 percent of the cost is paid by federal dollars, and the other 20 percent is paid by the local match, thus “softening” or lowering total costs for LPAs. When projects use federal-aid funds, property owners must be offered a fair market price based upon an appraisal made by a qualified appraiser, although owners may forfeit their right to an appraisal. INDOT’s *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*, dated December 1989, contains detailed guidance for local acquisition of right-of-way. Due to its significance and value to local officials, especially county commissioners, the manual will be referred to frequently in this discussion.

Methods of Acquiring Public Road Right-Of-Way

Many judicial practices and laws that are used in the United States today originated in England or have ties to that country. Thus, procedures for obtaining right-of-way in Indiana counties date back to the early 1800s. The first Indiana law was enacted in 1817, one year after Indiana became a state. It was known as the Act of 1817, subtitled “An Act for Opening and Repairing Public Roads and Highways.” Over the years the language and procedures of the Act of 1817 have been updated and changed to meet the needs of the times.

Local governments use four basic methods to obtain right-of-way for local roads, streets, and bridges in Indiana counties. The first of these is the direct purchase method. When using the direct purchase method, the agency offers to purchase a parcel of land, which must be appraised so the property owner may receive a fair market price for the parcel in question. Negotiation of the acquisition must follow and be conducted in accordance with the guidelines of Title 32, “Property,” Title 8, “Utilities and Transportation,” and Title 36, “Local Government,” according to Indiana Code. The process should involve the local government unit’s legal counsel from the beginning.

Second, property owners may donate land for right-of-way use. In this case the local government agency can assist in having the land appraised to establish a valuation for property donated for income tax purposes.

Third, right-of-way may also be established “by public use.” In such cases, there may not have been a grant or dedication to the government or a condemnation by the government. Instead, the government and/or the public have used or otherwise exercised control over the right-of-way for an extended period. If the public has used a road or street for an extended time, and if use of the road or street meets the time and width requirements presented by **IC 8-20-1-15**, right-of-way can be transferred to the local government agency. The period of twenty years provided in **IC 32-5-1-1** is the period most often used in these cases. In the Case of Elder vs. Board of County Commissioners (Notes to Decisions, **IC 8-20-1-15**, Lexis-Nexis), the court ruled that where the boundary lines of a road have never been established by any competent authority, but the right of the public to travel over such road has been established by continuous usage, the width of such road is determined by the

width of such use. Use, therefore, is the sole test of establishment of width if a competent authority has never established boundary lines.

The fourth method of acquiring right-of-way, known as eminent domain, is a legitimate police power local governments use to acquire property. When local governments exercise eminent domain, the government agency must follow the guidelines set fourth in (**IC 32-11-1**, **IC 32-11-1.5**, and **IC 8-20-3-1**) to ensure the use of proper procedures in protecting both the rights of the landowner and the interests of the local government agency.

Acquisition Procedures

A local government agency must follow many procedures and standards during the acquisition process. When acquisition of real property takes place, legal procedures governing this process can be found in Title 32 of the Indiana Code. The local government agency should retain a competent legal advisor to provide professional legal assistance whenever the agency is making an acquisition for right-of-way use. Construction projects that use Federal-Aid Highway Program funds must be thoroughly coordinated with the procedures laid out in INDOT’s *Right-of-Way Acquisition Procedures Manual for Local Public Agencies*, dated December 1989. Due to the importance of this particular topic, the acquisition of right-of-way in accordance with these procedures will be discussed first.

Federal regulations (49 CFR), do not distinguish between projects using federal funds in the right-of-way phase and those in other phases of the same project. All projects using federal funds must comply with uniform act (Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended) and INDOT *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*. INDOT requires local public agencies to provide written assurance of compliance with the regulations. Following the completion of all right-of-way and relocation activities for the entire project, the local public agency must again certify that the right-of-way is clear for letting of construction and that all applicable Federal Highway Administration (FHWA) policies and regulations have been followed. Noncompliance with applicable laws, policies and procedures could result in an FHWA determination that all or part of a project is ineligible for federal aid. INDOT requires that the local public agency provide an LPA-Intro form with proper indication as to the intended use of federal funds before a public hearing can be held. The LPA-Intro form provides specific information about the project.

Programming and authorization by the FHWA precedes the right-of-way phase to ensure that federal and state regulations are followed. INDOT will then issue a design approval, which must be received by the local government before right-of-way activities may begin. INDOT considers right-of-way engineering, appraising, review appraising, negotiating, relocation assistance, and property management as part of the right-of-way phase.

The following is a list of items that are included in the INDOT definition of right-of-way engineering:

- A title search, which includes one valid transfer of fee beyond a 20-year period from the certification date on the title search document
- A metes and bounds legal description and transfer documents for all partial takings. All legal descriptions must be prepared by an Indiana licensed land surveyor
- Final right-of-way plans
- Individual plats for each parcel
- A stakeout locating the new right-of-way line for partial takings must be included in all parcels
- Preparation of an Appraisal Problem Analysis, required only on those projects using federal funds in the right-of-way phase
- The detection of hazardous waste or contaminated soil in the right-of-way

The scope of the work includes these conditions:

- A scope-of-the-work meeting scheduled prior to the initiation of right-of-way engineering work
- Compliance with special requirements when right-of-way engineering is performed under an agreement with a consultant using federal aid funds and fees
- If local forces perform right-of-way engineering, with reimbursement from federal funds, the LPA must submit an estimate of the cost along with a request for authorization of FHWA funds
- INDOT's engineering manual must be followed if federal funds are used in the right-of-way phase

An "appraisal problem analysis" contains an examination of the proposed acquisition by a qualified appraiser to determine the appraisal techniques to be used. Detailed procedures for developing the analysis are found in INDOT's *Acquisition Procedure Manual*, *The Appraisal Manual* and in various professional references used by qualified appraisers. When federal aid is used in the right-of-way phase, INDOT must approve the appraisal problem analysis before, or concurrently with, the submission of the consultant's agreement for appraisal purposes. If Federal Highway Program funds are to be used for preparation of the analysis, work cannot be performed before authorization and notice to proceed.

Right-of-way services include the following items:

- Right-of-way supervision
- Appraising
- Buying
- Review appraising for relocation assistance
- Property management
- Legal services
- Relocation assistance
- Supplemental agreements for additional work

If federal funds are to be used for consultant services in a right-of-way project, a scope-of-the-work meeting must be scheduled through the area engineer within the Division of Local Assistance of INDOT before the initiation of the right-of-way acquisition phase. Standard agreements for services to be provided by a consultant or individual directly under contract with the local government will be made available by the area engineer prior to or at the time of the meeting.

Federal regulations require that qualified personnel be used in the acquisition of property and relocation of individuals or businesses because of all construction projects. Required qualifications of these individuals are listed in the INDOT's *Right-of-way Acquisition Procedure Manual for Local Public Agencies* and are available upon request from the Division of Land Acquisition. When federal aid is used in the right-of-way phase of a construction project, the persons who will be performing right-of-way services must acquire prior approval from INDOT. If federal aid is not used in the right-of-way phase, individuals performing right-of-way services need not be approved by INDOT. Nevertheless, federal and state regulations must be complied with, if applicable.

Standard agreement forms are required for projects that use federal aid for right-of-way engineering services, right-of-way acquisition or relocation services, and legal services. These standard agreements are also made available by the Division of Land Acquisition and include forms for right-of-way engineering, right-of-way services provided by consultants, appraising, review appraising, buying, relocation assistance, property management, legal services, and supplemental agreements for additional work not covered in the original agreement. Proposed agreements, again, are to be submitted for review to the chief of the Division of Local Unit. INDOT will return the agreements to the LPA for instructions, modifications, or executions, whichever are applicable.

Acquisition by Public Use

Another method to establish or acquire right-of-way is "by public use," which is a common law prescription. Statutory guidance, established by long-term use for the legalization of right-of-way, can be found in Title 8 of the Indiana Code. A period of 20 years has been designated as the rule for determining the basis of legalizing the established public use of a roadway. Highways laid out before April 15, 1905, or used as such for twenty years or more, "shall continue as originally located and as of their original width until changed by law" (IC 8-20-1-15). Moreover the statute specifies the width of county highways designed and built after January 1, 1962, as being restricted to not less than 20 feet in width on each side of the centerline, but the law does not include additional widths needed for cuts and fills. This also applies to ditches and drains, although the statute does not mention it. If land is used as a highway with the owner's knowledge and consent, a dedication of that property occurs, or the permitted use raises an assumption of dedication. Previous court decisions have supported the contention that consent is not material and that "use" is the sole test of establishing right-of-way.

Land Acquisition Process

- Federal Funds Authorization
- LPA Consultant Agreements
- Right of Way Engineering and Approval (Key Step must precede Buying Process)
- Initiation of the Buying Process
- Notification, Appraisal and Review Appraisal
- Offer to Purchase
- Negotiation
- Acceptance or Rejection of Offer
- Rejected Offer? Go to Condemnation
- Accepted Offer, Go to Relocation Process
- Payment, and Final Audit

Notes: Donation may replace purchase at some point prior to final sale. Regardless the right to just compensation is a key element.

Figure 6-1. Steps in the land acquisition process.

Acquisition of Land for Improvement of Existing Right-of-Way

When an LPA needs to acquire more land to widen an existing right-of-way, the process of acquisition does not change materially, but the troubles and difficulties that come along with the procedure can be important. Landowners will sometimes adopt a negative view of the taking of more property to improve the roads and streets. One method to avoid such problems is for the LPA to develop a well-thought-out information program. A system of communication among the local officials and the landowners can determine whether a government agency must enforce eminent domain powers, which should always be a last resort, or can rely on a simple land acquisition procedure. County roads requiring additional right-of-way for improvement of drainage or the installation of needed utilities are often left unimproved because owners are reluctant to give up more property. As stated before, these problems occur not only at the county level; but city officials, hoping to improve street maintenance in small communities, also come across similar situations. If the LPA can convince citizens that improving the roads, streets, or highways arose from the people in the first place, then citizens may take a more compromising attitude.

Authorization to Proceed

When the consultant agreement for right-of-way services has been approved by INDOT and confirmed between the consultant and the LPA, INDOT's Division of Land Acquisition

will request authorization to proceed from the FHWA. The local agency must submit a request for authorization of anticipated acquisition costs. The request can include costs for services by local forces, land improvements, damage repair, relocation aid, and incidental right-of-way costs for items such as recording and property management. Upon receipt of authorization from the FHWA, the LPA will be given notice to proceed by INDOT Division of Land Acquisition (DLA).

If additional funds should be required for right-of-way costs, the local agency can submit a request for these funds to the DLA. The request must include a parcel listing with approved appraisal amounts, documentation of actual costs above the estimate, and other administrative settlement costs (ten to fifteen percent of total fair market value). The Division of Land Acquisition will verify the request or suggest modifications. When approved by FHWA, a modified project agreement will be returned to INDOT for forwarding to the local government.

Appraising

If the federal government is funding the right-of-way project, there are minimum requirements for any persons performing right-of-way acquisition functions that must be followed. This section will focus on the minimum standards set forth for the appraising personnel, their responsibilities, and regularly occurring situations. Before any negotiation procedures between the LPA and the property owner, an appraisal of the real property must be performed. Special qualifications of the appraiser consist of the following:

- Holds a valid Indiana real estate broker's license or is employed full-time by the LPA
- Has successfully completed some form of technical appraisal training or has experience in appraising the specific type of property to be appraised. (Sometimes the submittal of sample appraisal work is required to prove expertise.)
- Is experienced in right-of-way acquisition appraising

If needed, the LPA can contact the INDOT Land Acquisition Division to obtain a list of qualified personnel for appraising and review appraising. Review appraisers need to possess all of the above qualifications in addition to these further abilities and experience:

- Has done extensive work in eminent domain appraisals
- Demonstrates the ability to analyze the appraiser's work and recognize any ambiguities in the appraisal report
- Some experience in condemnation proceedings is recommended

Responsibilities of qualified appraisers are as follows:

- Examine right-of-way plans
- Make on-site inspections of each parcel acquired for right-of-way

- Decide whether each parcel should receive a market estimate or an appraisal according to FHWA standards
- Complete an appraisal problem analysis report
- File a summary sheet for each parcel (see the LPA *Right-of-Way Acquisition Procedure Manual*, Sec. VII B, Part 5)

Before an offer is made to the property owner to purchase the property, an official representing the acquiring governmental agency or LPA must approve each parcel for purchase in writing.

Sometimes the owner of property to be acquired may indicate that he or she is willing to donate property. If so, that individual must be fully informed of the right to receive just compensation based upon an appraisal. Providing information on this subject may best be accomplished by sending the property owner a copy or facsimile of the pamphlet *How Land is Purchased for Highways by Local Public Agencies*. Next, the owner of the property must sign a written statement that he or she waives the right to an appraisal and a receipt of just compensation.

It is possible that a property owner is willing to donate right-of-way but wishes an appraisal for income tax purposes. The acquiring agency in this case must provide a review appraisal, and then the property owner can waive his or her right to receive all or part of the just compensation. The waiver of the right to receive just compensation must be fully documented.

Purchasing

All buyers that purchase land for local public agencies are required to possess a valid Indiana real estate broker's license or be employed full-time by the LPA. Secondly, buyers should be very knowledgeable of the requirements set forth in the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 for right-of-way acquisition. The Local Assistance Unit will provide anyone a copy of this manual for a nominal fee. Other requirements include the ability to read and understand right-of-way plans, appraisals, title search information, clearing title defects, and must possess the ability to communicate well with others.

INDOT provides manuals for buyers at a nominal cost through the Local Assistance Unit of the Division of Land Acquisition. Buyers must make a prompt written offer to each property owner and personally provide this offer to each property owner or have it sent by registered or certified first-class mail with return receipts requested. All offers made on parcels involving relocation must be delivered personally by the buyer. The owner is to be given a written statement of the basis for just compensation. The buyer must also keep record of all contacts with the owner documenting each encounter in a "Buyer's Report", see Exhibit 14, in the *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*, which will become part of the parcel file and is susceptible to review by both INDOT and the FHWA. Furthermore the owner is to be given a "reasonable" time to accept or reject the offer (a period of 25 days has been set as the reasonable time duration). When every reasonable attempt and good effort that has been put forth in trying to purchase or

acquire such right-of-way has failed, then only as a last resort may the parcel advance to condemnation proceedings, better known as eminent domain.

The management and retention of improvements on uneconomic remnants, administrative settlements and legal requirements are detailed in the *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*. Management, or disposal, of the land or land improvements required for any project using federal funds must comply with FHWA and INDOT regulations. If the acquired property is not needed immediately for construction of the project, the land and improvements may be leased back to the owner or some other party on a short-term basis or for a specific period, subject to termination by either party on 30 days written notice. The amount of rent shall not exceed the fair-market rent for the property.

The buyer of the project tract must offer the owner the option to retain improvements located within the right-of-way at the time the owner is contacted and an offer is made for acquisition. If the landowner wishes to retain permanent structures such as, buildings, barns, or garages, he or she then assumes full responsibility and risk involved in moving the structures and clearing the property of improvements. If the landowner wishes to retain improvements, he or she must post a performance bond to ensure that the property will be cleared within 60 days after receiving payment. Questions concerning the amount of the performance bond should be directed to the Division of Land Acquisition. If it is determined that the acquired improvements have significant salvage value, a public sale may be conducted. This also applies to excess land acquired as an uneconomic remnant.

Finally, disposing of improvements by demolition may be necessary. (Demolition is a valid means of disposing of them.) If the LPA desires to dispose of improvements in such a manner, a request must be submitted by the LPA to INDOT for approval, if the FHWA has participated in the acquisition of the property.

Excess Property Purchased with Federal Aid

Knowing that a property owner must be compensated for all property acquired, the FHWA *will not* reimburse an LPA for the purchase price of excess land. In 1989, the FHWA required that the appraiser is responsible for allocating a value for the excess property. The procedure to be followed states that the excess land is to be valued as if it were a separate residue tract. The appraiser that reviews the area must identify the excess and the total dollar amount on the appraisal review sheet (see Exhibit 10 of the *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*).

If the process of acquisition leaves the property owner with a portion of land that is considered an uneconomic remnant, the LPA is required to offer a fair market value for the remnant along with the portion of property that is actually needed for the intended project. The property owner must be given the opportunity to retain any part of the property that will not be used for the project. So, in general, any excess land that

is not used for the project at hand is not eligible for federal reimbursement. The LPA must take responsibility for any purchase it makes, deducting any extra cost from the total value of the property.

Relocation

When relocation procedures are necessary, the federal regulations provided in 49 CFR and the state laws mandate specific entitlements for persons who must relocate due to the public acquisition of right-of-way. When any person, family, business, farm operation, or non-profit organization is displaced, relocation assistance must be made available by the local government acquiring the property. INDOT's policy is that LPAs must perform their own relocation work by hiring consultants or using their own staff members. If consultants are hired, they are to receive technical advice from the DLA. Any person that performs the relocation services must be pre-qualified by INDOT, and this individual must obtain and follow the guidelines in INDOT's Relocation Manual to assure compliance with all current federal regulations. If needed, a list of approved agents is available upon request from the INDOT Land Acquisition Division. Within a few days after a property owner receives the written offer to acquire all or part of his property, the relocation agent must contact the owner, as well as any tenants occupying the property, to explain the relocation process and entitlements. No individual lawfully occupying real property, whether owner or tenant, shall be required to move without at least 90 days written notice.

The environmental stage of project development plays a major role in the entire relocation process. During this stage, relocation surveys are conducted to determine the impact that the displacement of individuals or businesses may have on the community. If the survey indicates that potential problems may arise due to the unavailability of adequate and affordable replacement housing or replacement business sites, a more detailed relocation plan may be required at the right-of-way acquisition stage. Information such as the owner information, type of relocation, condition of the property, description of the neighborhood, income, and number of rooms are vital to development of the detailed relocation plan.

The relocation agent must inform each person to be relocated of his or her right to appeal. Any aggrieved person may file a written appeal with the LPA in any case in which the person believes that the agency has failed to provide adequate relocation assistance or that the relocation entitlements have not been properly determined. The person so notified must file the appeal within 90 days after the written determination entitlements are received in order for his or her appeal to be considered valid.

Right-of-Way Certification

For right-of-way to be certified, specific guidelines must be followed. Before awarding any construction contract, local officials must certify to INDOT that they have complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. The form letters required for

this process can be found in the *Right-of-Way Acquisition Procedure Manual for Local Public Agencies*. Right-of-way certification must be signed by proper authorities of the LPA and be accompanied by the aforementioned form letters. Also the certification must be received approximately two months before scheduled contract letting. Moreover the Land Acquisition Unit has to certify to the FHWA that the right-of-way is clear and that all necessary relocations are complete before construction letting can occur. Rights-of-entry on the acquired property are allowed only in extreme circumstances, and a certification letter must be filed and special FHWA permission received. When right-of-way acquisition is complete, the cost of fees and the acquisition will be audited by the contract audit section of the Division of Accounting and Control or the INDOT Land Acquisition Division, depending upon the type of authorized costs. Settlements that are higher than fair market value must be approved by INDOT and, in some cases, the FHWA. The LPA can request an audit of the right-of-way engineering portion of the project to finalize that portion of the project. Records are to be retained three (3) years after a voucher is paid.

Easements

An easement may be defined as a "nonpossessory interest in the real estate of another" (Lusk, Law of the Real Estate Business) or simply as the right to use the land of another person for a particular purpose. Easements can exist in any part of the land, including but not limited to airspace above the tract, mining rights or other interest below the surface, and right-of-way across a parcel of land. Obtaining an easement through acquisition may be accomplished using the following methods:

- Express grant
- Reservation in a grant
- Implication
- Estoppel
- Necessity
- Prescription

As mentioned before, all of these methods may be used to acquire easements, but for our purpose, the last two--necessity and prescription--will be the focuses of attention.

A "way-of-necessity" provides a property owner with egress and ingress rights over adjoining private or public land in order to reach property that is not otherwise accessible by ground transportation. Easements, in general, and way-of-necessity issues are certainly covered by real estate law. However, these issues are discussed here because road and street administration and management affect the rights of property owners. The need often arises to create way-of-necessity easements for property owners because of right-of-way acquisition and related public construction projects that deny a property owner access to his or her property. Many of the key statutes that govern easements are found in Title 32, "Property," of the Indiana Code.

Any landowner who becomes landlocked by a public stream, ditch construction, or public dam project has the right of

easement established by way of necessity (**IC 32-5-3**). The establishment of that easement is to be in accordance with **IC 32-5-3-1**. In cases where private property owners must grant an easement by way-of-necessity, usually it is best for the parties concerned to work problems out privately. Where public property must provide the easement, the burden is placed on the landlocked property owner to petition the local agency or agencies possessing the land to provide the way-of-necessity. If a local agency refuses to grant an easement by way-of-necessity to a landlocked property owner, the property owner can then take action by filing a complaint to establish an easement. If a property owner takes such an action, the issue becomes a matter for the courts to resolve rather than the local government. Key tests that the need for right-of-way over the land of another arises from necessity and not from convenience can be found in the cases of *Anderson vs. Buchanan*, 8 Ind. 122 (1856) and *Steel vs. Grigsby*, 79 Ind. 184 (1881). Both cases clearly show how the courts use necessity as the ruling factor.

There are also special situations that result from the vacation of streets or roads. Guidelines for the petition of vacation or relocation of roads and other public utilities are located in **IC 8-1-15**, "Water Utilities: Vacation or Relocation of Roads." A property owner that may be affected by vacation or relocation that leaves his or her land without means of ingress or egress shall file a written remonstrance with the court. Another special case is railroad right-of-way. The statutory guidelines that govern the vacation or the abandonment of railroad right-of-way may be found in **IC 32-5-12**, "Abandoned Railroad Right-of-Way." For a property owner dealing with railroad right-of-way issues, legal advice is strongly recommended.

Easements by means of prescription can better be thought of as totally independent from dedication, necessity, or purchase. Establishing an easement by prescription requires substantial evidence. The procedures and requirements that are needed and must be followed are found in **IC 32-5-1**, "Easements: By Prescription." A prescriptive easement may exist, according to **IC 32-5-1-1**, if use has been continued uninterrupted for a period of 20 years. This process is sometimes referred to as "adverse possession." In the view of an LPA, if the public has used a road for the period of time stated and the use has been known (open and notorious) and was outside the interest of the landowners, then it is possible that a prescriptive easement exists.

Apparent Right-of-Way

To understand the Apparent Right-of-Way statute, the reader needs to first grasp the concept of right-of-way created by public usage. Right-of-way "by public use" is created by two methods—prescription and statute—also known as unwritten rights. Prescription is a method of acquiring title to property through a long-continued use. The prescriptive period in the state of Indiana is 20 years and can be found in **IC 32-5-1-1**. The use must be open, notorious, adverse, and continuous for the entire prescriptive period. Statutory highways are created by a continued use over a period of 20 years in which the public has no right to use the highway except through the continued usage of the way. Statutory use differs from prescriptive use in

that to create right-of-way by statute, the use simply needs to be continuous and not adverse. Due to the unwritten nature of these methods of acquiring right-of-way, the highways have no established width by law. However, their width, as used at the end of 20 years, cannot legally be intruded upon. Statutory highways are the most common highways created because of unwritten rights. Because statutory highways typically have no written description of the right-of-way, the Apparent Right-of-Way statute aids in helping county executives resolve right-of-way discrepancies.

The Apparent Right-of-Way statute can be found in **IC 8-20-1-15** and **IC 8-20-1-15.5**. The statute describes the apparent right-of-way as being "the location and width of county highway right-of-way for purpose of use and control of the right-of-way by the county executive." The statute also gives county executives the right to establish the apparent right-of-way of a county highway, but the width of the apparent right-of-way may not exceed twenty (20) feet on each side of the centerline, exclusive of additional width required for cuts, fills, drainage, utilities, and public safety. The Apparent Right-of-Way statute was intended to help county executives and others to identify, map, and describe their rights-of-way without going through the judicial process.

Public Utilities' Use of Public Road Right-of-Way

Because the Apparent Right-of-Way statute states that the right-of-way of a highway cannot exceed twenty (20) feet on each side of the centerline or include anything outside of that area, a question arises about placing utilities on the shoulders and in side ditches of county roads. Do governmental entities have the right to grant permits to utility companies that give permission for placing utilities in these locations? The Indiana courts have been consistent in their ruling on public rights-of-way. They have maintained that the limits of any governmental entity's permits to utility companies should be restricted to the portion of land that is physically occupied by the road and no more. In the case of *Anderson vs. the City of Huntington*, 40 Ind. App. 130, 81 N.E. 223 (1907), the court stated, "The way cannot be greater than the use. Where the boundary lines of a road never have been established by any competent authority, but the right of the public to travel over such road has been established by continuous usage, the width of such road is determined by the width of such use." Although this does not answer the initial question, it does identify inconsistencies within the law.

Technology has advanced rapidly, and an increasing trend is for companies using fiber-optic cables to bury their communication lines alongside county roads. As a result, local governments will be confronted with problems relating to right-of-way issues more frequently into the future. Until someone decides to go to court, and a definitive, precedent-setting ruling is made, the solution to such problems will go unknown.

SAMPLE COUNTY UTILITY PERMIT

Permit
For Underground Transmission Devices on County Right-of-way

Permittee: _____
Signature: _____
Address: _____

Phone No: _____
Title: _____

County Use Only
 Permit No. _____
 Bond No. _____
 Approval Date _____
 Completion Date _____

Location: Application is hereby made for permission to install and thereafter maintain

 (fully describe proposed work)
on or along county Road (s)

 (Give road on which work is to be performed & distance to nearest intersection)

Length: Totals included in this Permit Application
 _____ feet of installed line (on County Right-of-way) _____ road cuts
 _____ road bores (County roads only — do not include private drives)
 _____ bridge or overpass attachments

Responsibility:
 Reference County Ordinance and Number _____, the applicant agrees to post the financial guarantee (bond, letter of credit or identifying agreement) in accordance with paragraph _____ of (Ordinance and Number) and the following:

- 1) the satisfactory repair of any and all excavated areas and maintenance of same for one year after the Certificate of Compliance is approved.
- 2) installation and maintenance of barricades, signs, lights etc., and all traffic control (flagman, etc.) in accordance with the latest edition of the Indiana Manual of Uniform Traffic Devices (IMUTCD).

- 3) indemnify and save harmless the County, its agents and employees for any and all claims for damages or actions arising out of the work performed under this Permit and the continuing uses by the Permittee, including but not limited to constructing, reconstructing, maintaining and using said utility lines approved under this Permit.
- 4) keep a copy of this Permit with each work crew while work is in progress and present it upon request of any County official.
- 5) notify all law enforcement and emergency agencies (police, fire, ambulance, etc.) in the event that any lane closings are required for the work performed under this Permit.
- 6) remove and/or relocate any facilities covered by this Permit when required by the County for performance of construction or maintenance activities on county highway right-of-way. Removal and/or relocation of facilities in county highway right-of-way shall be at the sole expense of the Permittee except as provided for by applicable statutes.
- 7) attach to this application the Notification Form, which provides for notification of property owners adjacent to the right-of-way where work is performed.
- 8) attach to this application drawings or sketches showing the work to be done and its location.
- 9) contact the _____ County Highway Department upon completion of the project.

Conditions: The following conditions apply to granting of this Permit —

- 1) this Permit will be valid for three hundred sixty five (365) days from the date of approval. If the work covered by this Permit is not completed within this time a new Permit will be required.
- 2) this Permit is valid only for work on _____ County Highway right-of-way. Permittee shall obtain approval from appropriate agencies for work inside incorporated areas of the County and secure consent by easement or other legal document from abutting property owners for work performed outside the Highway right-of-way.
- 3) this Permit in no way relieves the Permittee from meeting all applicable federal, state, and local laws.
- 4) all lines crossing beneath County roads shall be bored unless special permission is granted in Item 5 below.
- 5) _____

Approval: This Permit application is approved subject to the requirements set out in _____ (County Ordinance or Other Citation), the conditions specified herein.

 County Highway Engineer or Superintendent
 Original — Applicant

Date: _____

 One Copy — Engineer's File

Figure 6-2, Sample Utility Permit
 This sample permit is based upon the Morgan County Highway Department permit used in 2002. By permission.

Eminent Domain

Eminent domain can be exercised by federal, state, or local governments and may be delegated by Congress or the state legislature. If private property is condemned in order to be used by the public, the property is taken through a legislative rather than a judicial procedure (Lusk, 523). "From an early date the courts have recognized that the taking of private property for the establishment of public transportation systems is a taking for public use" (Lusk, 523). Counties, cities, towns, railroads, utility companies and other agencies designated by statute have been delegated the power to exercise eminent domain. Specific mention of county power to acquire right-of-way and rights to lands necessary to widen, straighten or change the route of any county highway are detailed in **Section 8-20-3-1** of the Indiana Code. General procedures for eminent domain proceedings, as they apply to any unit or agency having the power of eminent domain, are specified in **IC 32-11-1**.

The power of INDOT is spelled out in **IC 8-23-2**. Furthermore, **IC 8-23-2-6** provides the guidelines for a commissioner, or the commissioner's designee, concerning the acquisition of land and property rights for highway use.

Understanding Public Issues and Dealing With Them

Over time, state, county, and municipal officials will encounter misunderstandings and problems when public roads must be constructed, maintained, or improved. The objective of this section is to suggest a commonsense approach to deal with these issues.

As an example, the LPA may be looking to expand a street intersection in your region. All landowners are being very cooperative except one who is reluctant to give up his or her land for the cause. Misunderstandings and disputes with an adjoining landowner can often arise because of misinformation or a lack of information on the landowner's part. If local officials can explain to the uncooperative resident the reasons for expanding or improving the intersection, the resident will be more likely to become flexible. Local officials might argue, "By expanding this intersection, we predict that three lives will be saved each year"; or "If we widen the intersection and add the turn lane, traffic will not back up in front of your drive way"; or "Improving the intersection will also improve the storm water

drainage and most likely rid your yard of any future ponding.” A resident who feels that he or she is getting something positive in return or that the community is benefiting from his or her loss may tend to be more cooperative.

In summary the government and its officials should be concerned with how the public views their decisions. In addition, a lack of ability in one government official to deal successfully with private citizens and their concerns may be detrimental to the public’s opinion of every person representing the LPA.

Special Right-of-Way Issues

Outside, but related to the entire spectrum, of the road right-of-way discussion are several topics which have an impact on LPAs. Among these are the land description methods, records search and interpretation, and the railroad abandonment process. Land survey methods and documentation issues will be discussed first, and the more complicated railroad abandonment process will be discussed later.

Locating and Describing Right-of-Way

Description and comparison of two methods of describing property, especially right-of-way, will aid local public officials in making decisions about the process of right-of-way acquisition. The following paragraphs are an elementary review of two land surveying methods used to describe right-of-way. Some of the advantages and disadvantages of each method are identified and discussed. Local officials should consult with a local registered land surveyor for professional assistance on these matters.

Two land description methods in use today are the metes and bounds method and the route survey method. Metes and bounds descriptions have been used for many years to describe right-of-way. Taking advantage of long-term traditional use, the metes and bounds method presents many challenges for land surveyors. For instance, land surveyors are required to report ambiguities in property descriptions, which leads to extensive courthouse research and fieldwork time to gather correct information. In cases where platted subdivisions are encountered, only the lot widths are used to compute right-of-way boundaries. This description then creates impediments for land surveyors, who may later work to retrace a lot in the platted subdivision because set right-of-way monuments often do not match platted subdivision lot corners. Local officials are concerned first because the metes and bounds method is a time consuming process, generating additional costs for LPAs. The second concern is the problems encountered when additional right-of-way is required along a route. The LPA is responsible for shouldering any additional cost burden.

The second land description method is the route survey method. Common to the two methods is that each property owner’s boundary lines are shown on the survey and each parcel receives an identification number. Unlike the metes and bounds method, route surveys are a recorded plat describing each parcel and right-of-way corner as a station and distance offset

from the design centerline of the highway, which has already been surveyed and mathematically described by the public land system. Future right-of-way acquisition, thus, is easier and more cost efficient for LPAs. The main advantage of a route survey is that individual description ambiguities are not addressed, thus saving time and money in the right-of-way acquisition process. Route surveys allow right-of-way to be better located and described initially and more easily relocated in the future.

Location of Records

Locating right-of-way documentation requires painstaking and diligent effort. Briefly, documents such as right-of-way grants for individual parcels, highway plans, previous route surveys, or deeds for state roads or US highways are located in the county recorder’s office of the county in which the highway segment is located. Original Indiana state highway plans and route surveys are on file with INDOT at the Indiana Government Center North in Indianapolis. Local road records are often found in the recorder’s records. Many older records may be found in historical records, which may or may not be located in the county or city government files. Throughout the state, many of these records have been transferred to local historical organizations. If legally recorded, the record should be available at the county recorder’s office.

Local streets and rights-of-way within city or town limits are generally controlled by subdivision plats, which create the adjoining lots and parcels. Documents for local streets as previously defined are also found in the county recorder’s office. City engineer and street departments may have right-of-way records.

Researching county road rights-of-way can be difficult. In some counties, indexes or road records and right-of-way widths are available in the form of tabular lists or maps. Other counties have kept road record books, which are a chronological history of the roads under county jurisdiction. Road record books contain information, such as width of rights-of-way, beginning and terminus points of roads, and changes to the right-of-way widths. The county surveyor, engineer, recorder, highway department, and commissioner’s offices are locations where road record books may be found. If road record documentation is not found in these locations, research should be directed to reading county commissioner’s records, which are an account of general county proceedings. See the historical comments above.

Railroad right-of-way deed documents may be found in the recorder’s office of the county in which the right-of-way exists. Among the most useful documents are railroad parcel valuation maps. RPVMs are detailed drawings depicting the parcels, parcel record information, parcel purchase dates, parcel transfer dates, track, and right-of-way geometry, stationing, mile posts, section lines, and plat references. Railroad companies created valuation maps to track and maintain their property holdings. RPVMs are not documents of public record, but most railroad companies are willing to provide access to them. Some prudent county surveyors have obtained railroad plans and valuation maps and made them available to the public. Generous railroad companies have donated records to historical societies or

universities for preservation. Internet searches under the original railroad name can be successful in locating archived maps and records. As a last resort, individual archive catalogs are useful in discovering pertinent records.

Abandonment of Railroads and Railroad Rights-of-Way

Although the decline of the railroads in the United States began much earlier in the twentieth century, the abandonment of railroad rights-of-way accelerated in the 1960s and continues today, albeit at a slower pace. William Black reports in his 1985 study that 1967 mileage was at 6,488 miles in Indiana. By 1985, 1,689 route miles of railroad had been abandoned (Black, 1985, 3). Between 1974 and 2002, 2,160.83 miles of railroad were abandoned in Indiana (Computed from Black and INDOT Rail Division Sources, 2002).

Abandonment actions confront both property owners and local public agencies with the need to fully understand the implications of these actions. Notification of intent to abandon and notice of abandonment generate important questions about ownership of right-of-way, the liability of the parties, the status of structures, and the required procedures for transfer of real property and right-of-way land itself. Because of the complicated nature of the abandonment actions generated, state and federal agencies are tasked with specific responsibilities throughout the process.

For those railroads regulated by the U.S. Department of Transportation Surface Transportation Board, (formerly the Interstate Commerce Commission), abandonment actions are governed at the national level. Federal statutes require that timely notice of contemplated abandonments be given to customers, states, and local officials. State agencies that have responsibilities

in this process are the Indiana Department of Transportation, the Indiana Department of Environmental Management, and the Indiana Department of Natural Resources. Because railroad abandonment actions can also have environmental impacts, the U.S. Army Corps of Engineers and the U.S. Forest Service are federal agencies that have roles to play within the state. Indiana agencies should be continually updated by the railroads on current systems, contemplated changes of service, and abandonment plans. Since these procedures are never perfect, state and local officials must be alert to changes in the status of railroad services and plans. It is wise to watch what is going on and ask questions.

The U.S. Surface Transportation Board requires each railroad to prepare a system diagram map and to file it with the Surface Transportation Board. The board requires each railroad to prepare a map of its system and to file the map with the commission and with the designated officials of each state in which a railroad operates. The map is color-coded to identify lines that are anticipated to be subject to abandonment applications within the next three years, lines that are under study as candidates for future abandonment, lines for which an application is pending before the commission, lines operating under subsidy, and other lines that the carrier owns and operates, directly or indirectly. The railroads must provide a map covering the first three categories for newspaper publication in each county in which the lines are located. The newspaper notice is to be posted in rail agency stations or any station, if there is no agency station along the rail line. Rail system maps are to be provided to interested persons at a reasonable cost.

Beginning with the intention to abandon service and/or right-of-way, a number of specific actions are required. A railroad may abandon any part of its line or discontinue operations only if the Surface Transportation Board finds that present or future "public convenience and necessity" requires or permits the abandonment or discontinuance. The railroad making application for abandonment is required to notify the governor of each state affected, post the notice in each terminal and station on the line, publish the notice in a newspaper of general circulation in each county in which the line is located, and mail the notice to the extent possible to all shippers who have made significant use of the line in the most recent 12 months. The railroad is required to notify a number of agencies, customers, and labor organizations. (See 23CFR 1152.2, Notice of Intent.)

The Surface Transportation Board is required to go beyond a determination of present or future "public convenience and necessity" and to consider potential future uses of railroad rights-of-way and facilities. Examples are mass transit, recreation, highways, transportation, and energy conservation. If the board finds that the property proposed to be abandoned is suitable for other public uses, the property may be sold, leased, exchanged, or otherwise disposed of only under the conditions provided for in the abandonment order.

INDOT is required to notify local governments of impending railroad abandonments (IC 8-3-21.1). INDOT acts upon receiving notice from any railroad company of intent to abandon and is required to notify boards of county



Figure 6-3. This double stone arch culvert located a few miles north of Lexington, Indiana supports abandoned railroad right-of-way crossing Woods' Fork. Located on private property, it is a relic of the past; thought to have been constructed in the 1860s. The future is a question mark. (Photo by Andy Cain)

commissioners, county surveyors, cities, towns, the Indiana Department of Highways, the Department of Commerce, and the Department of Natural Resources.

Within one year of receipt of a Surface Transportation Board order authorizing abandonment, the abandoning railroad is required by Indiana statute to remove crossing control devices, railroad insignia, and rails from the right-of-way that serves as a public highway and to reconstruct that portion. Counties, cities, towns, or the state may restore the crossing if the railroad refuses to do so. The railroad can be billed through the property tax for its share of the work (**IC 8-3-1-21.1**).

Once notice of intent to abandon has been received, or permission to abandon has been granted, local governments are faced with some questions that are difficult to address because of uncertainty about ownership of rights-of-way, tort liability, and mounting pressure from landowner environmental groups and from state and regional planning entities. One of the toughest questions concerns ownership of the land. Trails enthusiasts are often interested in converting railroad rights-of-way into hiking trails. Some landowners are vocal in their opposition to the movement to purchase railroad rights-of-way for public purposes. Landowners argue that railroads should return right-of-way easements to adjacent landowners and those adjacent landowners should have the first opportunity to purchase abandoned corridors. Finally, they argue that if corridors are acquired for public use, they should be made safe for both users and adjoining property owners. This protection would include maintenance of corridor fences along farm property.

Upon notification of a railroad company's intent to abandon railroad right-of-way, INDOT is to notify the Indiana Department of Natural Resources (DNR). DNR should then make a study of the feasibility of converting the right-of-way for recreational purposes. This must be accomplished within ninety (90) days. If the DNR finds that recreational use is feasible, appropriate agencies will be urged to take action to secure the right-of-way. (**IC 3-1-21.1**) Recent court cases concerning property rights makes these actions tenuous until the status of the right-of-way is determined.

State and regional transportation planning considerations are becoming more important in railroad abandonment decisions. For instance, a number of rail corridors may be potential sites for future development of high-speed rail transportation networks. Some planners argue that these corridors should be preserved for future use from both state and regional/national transportation points of view.

The status of the acquisition of the right-of-way can have a direct impact on how it is disposed of. Simply put, right-of-way purchased as an easement is just that, and the easement is extinguished upon abandonment. Right-of-way purchased in fee is the property of the railroad and can be transferred by warranty deed or more commonly by quitclaim deed. Special categories of right-of-way are those included in a charter grant by the state or by the federal government. One should look to special laws and federal statutes for guidance. For a discussion of railroad right-of-way in Indiana, see the report *Railroad*

Right-of-way and Property in Indiana: a Report to the Transportation Coordinating Board in the Transportation Research Center of Indiana University, ca. 1985.

Current rail abandonment cases and status are maintained by the Multi-Modal Division of INDOT. The division is on-line at <http://www.state.in.us/dot/modetrans/train/page9.html> and has links to federal and state agencies. The spreadsheet mentioned above is on-line as of this writing.

A Final Note: During the 1999-2002 periods, the courts in Indiana decided in favor of landowners' rights to easements owned by railroads but subsequently abandoned. The principle that abandonment extinguished the easement was upheld.

Questions and Answers Concerning Acquisition of Public Road Right-of-Way

The following section answers commonly asked questions about the subjects of eminent domain, acquiring title to right-of-way, donation of right-of-way, width of right-of-way, the disposition of abandoned right-of-way, and right-of-way for bridge construction.

Eminent Domain

Q: What is the power of eminent domain and why has the power of eminent domain been delegated to state and local governments?

Answer: Eminent domain has been defined as the right of a nation or a state, or those to whom the power has been delegated, to condemn private property for public use upon the payment of just compensation. The power of eminent domain is delegated by statute to local governments and other designated entities. If property is taken for public use, as it must be in the case of highways, the exercise of eminent domain is then considered a legislative act rather than a judicial one. Both Titles 8 and 36 of the Indiana Code contain statutes authorizing local governments to exercise the power of eminent domain.

IC 36-1-4-5 authorizes a unit to acquire by eminent domain, or otherwise, interests in real or personal property.

IC 36-9-6-4 authorizes a city works board to condemn real or personal property.

IC 8-20-3-1 states that a county executive may acquire the lands and rights necessary to widen, straighten, or change the route of any county highway.

Q: What procedures are used to negotiate a purchase before initiating eminent domain action?

Answer: As a condition before filing a condemnation complaint, the condemner may enter the property and, at least thirty (30) days prior to filing such complaint, make an offer to purchase the property or interest. The offer is to be served personally or by certified mail. If the

owner cannot be found, notice of the offer is to be given by publication in a newspaper of general circulation in the county in which the property is located or where the owner was last known to reside. The notice is to be published twice, the first time immediately and next, for at least seven (7) days, but not more than twenty-one (21) days, after the first publication (IC 32-11-1-2.1).

Q: How is notice of eminent domain action served on an unwilling seller?

Answer: COUNTY – Upon showing service (of the notice) under IC 32-11-1-2.1 for ten (10) days or proof of publication for three (3) successive weeks in a weekly newspaper of general circulation printed in English in the county in which the land sought is situated, the clerk shall send a copy of the notice to the address of each non-resident land owner. If the post office address of such owners can be ascertained by inquiry at the Office of the Treasurer, the court or judge in the action, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint three (3) disinterested freeholders of the city to assess the damages, or the benefits and damages, as the case may be, which the owners may sustain, or be entitled to, by reason of such appropriation (IC 32-11-1-4).

STATE – Whenever the governor shall deem it necessary to acquire any real estate to construct any public buildings or to acquire any real estate adjoining any lands of the state on which buildings may have been erected (s)he may order the attorney general to commence an action in the name of the state of Indiana, in the circuit court of the city in which the real estate is situated, by petition, praying that appraisers be appointed to appraise the value of real state (32-11-2-1). Upon the filing of such petition, the owners of the real estate shall have the notice provided by law in the commencement of civil action. It shall be sufficient to make parties defendants to such petition all persons who are in possession of the real estate and those who appear to be the owners, or have any interest, by the tax duplicates and the records in the office of the auditor and recorder of such county. After the notice has been given, the court shall appoint three (3) resident freeholders of the county where the real estate is situated to appraise the value (IC 32-11-2-2).

CITIES AND TOWNS – Whenever the works board of a municipality desires to appropriate or condemn, for the use of the municipality, any real or personal property, or to open, change, lay out, or vacate any street, alley, or public place in the municipality, including proposed streets or alley crossings of subways or other right-of-way, the works board shall adopt a resolution to that effect, describing the property that may be injuriously or beneficially affected. The board shall publish notice of the resolution in a newspaper of general circulation published in the municipality, once each week for two (2) consecutive weeks. The notice must name a date, at least

ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceedings (IC 32-11-1.5-3).

Q: What rights of appeal are open to property owners who are subject to eminent domain proceedings?

Answer: Any defendant may object to eminent domain proceedings because the court had no jurisdiction either of the subject matter or the person, or that the plaintiff has no right to exercise the power of eminent domain for the use sought or for any reason disclosed in the complaint or set up in such objections. These objections shall be in writing, separately stated and numbered, and shall be filed not later than the first appearance of the defendant. If any objections are sustained, the plaintiff may amend his complaint or may appeal to the supreme court or court of appeals from such decision. But, if the objections are overruled, the court or judge shall appoint appraisers (IC 32-11-1-5).

Q: What action should be taken if the property owner objects to the fair market value appraisal?

Answer: Once a report of appraisal is filed, the owner may, within a reasonable time fixed by the court, file exceptions alleging that the appraisement of the real estate is not the true cash value. If this occurs, either party may request a trial, which will be heard by either the court or before a jury. The clerk of the court shall give the notice of filing of the appraiser's report to all known parties in the action and their attorneys. Upon a trial, the court has the power to revise, correct, amend, or confirm the appraisal (IC 32-11-1-8).

Acquiring Title to Right-of-Way

Q: How does the local entity receive title to right-of-way that is acquired by any means (donation, purchase or eminent domain)?

Answer: It is most desirable for the local government to receive fee simple title to the right-of-way, either by warranty or quit claim deed, depending on the status of the title. Right-of-way grants or easements are also acceptable, but are least desired. (See the *INDOT Right-of-Way Acquisition Procedure Manual for Local Public Agencies*, 1989.)

Q: When does title pass, following completion of eminent domain proceedings?

Answer: Once the governmental unit has made payment to the clerk of the court in the amount set for the property, and has filed a certificate with the auditor of the county certifying that the amount has been paid and describing the real estate being appropriated, the auditor can then transfer the real estate being condemned to the governmental unit on the county tax records (IC 32-11-1-7).

Donation of Right-of-Way

Q: Can owners deduct, for federal tax purposes, the appraised value of right-of-way donated for roads and bridge approaches?

Answer: Yes. An approved appraisal must be provided to the owner by the acquiring government to ensure that a fair market value is clearly established. Because the income tax laws are changing, a property owner should either consult a tax expert or an attorney when making final decisions concerning this matter.

Q: What process is used to select, appraise, and manage the valuation of right-of-way turned over to local government?

Answer: A qualified appraisal to determine a fair market value is required. The statute provides for an offer to purchase and procedures for initiating the exercise of the power of eminent domain, should the offer to purchase be rejected (IC 32-11-1.5-3).

Width of Right-of-Way

Q: How does one fix the width of a roadway, if it has not been otherwise determined?

Answer: IC 8-20-1-15, "Highway by Use-Width," establishes the criteria, from at least the state's point of view, by stating that all county highways laid out before April 15, 1905, by law or by use for twenty (20) years or

more, are to continue as originally located and as of their original width, until changed according to law. From the first of January 1962, county highway right-of-way is to be twenty (20) feet or more on each side of the centerline of the county highway, exclusive of width, which is required for cuts and fills. A 1981 court case, *Board of Commissioners v. Hatton*, -Ind. App.--, 427 NE. 2d 696 (1981) resulted in the opinion that for boundary lines that were never established by competent authority, the width of the road established by use is limited to that portion actually traveled and exclude any berm or shoulder.

Q: Can county commissioners refuse to maintain right-of-way unless it meets minimum width criteria?

Answer: County commissioners can, by ordinance or resolution, further stipulate the widths of rights-of-way in the county road system, and they can establish width standards as a prerequisite for significant improvements (IC 8-20-1).

Q: How is a highway established by use?

Answer: A highway may be established simply because it has been used as such continuously and over a period of time. All highways laid out before April 15, 1905, according to law, or used as such for twenty (20) years or more, shall continue as originally located until changed according to law (IC 8-20-1-15). Therefore, a road used for twenty (20) years or more makes it a public highway by use, whether such use takes place with or without the consent of the landowner. Also, the frequency of use and the number of users is unimportant.



This railroad right of way, whether abandoned or not, gives us a clear idea of what is involved in abandonments: property rights, environmental issues and disposition of property.

Abandoned Right-of-Way

Q: What is the status of crossings over abandoned railroad rights-of-way?

Answer: If the Department of Transportation finds a railroad to be abandoned, it may order the removal of the grade crossing and the grade separation structures and restoration of the highway or street into a reasonable and necessary condition to accommodate public and traffic safety (IC 8-3-1-21.2). Any unit of government may resurface that intersection or crossing (IC 8-3-1-22). The highway is then returned to its original status.

Right-of-Way for Bridge Construction

Q: What are typical procedures used by local agencies in obtaining small amounts of right-of-way for bridge construction?

Answer: Common practice throughout the state is to ask for a donation first. If that doesn't work, the LPA will appraise the land and make an offer to purchase. In extreme cases, condemnation procedures are used as a last resort.

Right-of-Way Statutes

IC 8-3-1-21.1

Sec. 21.1. (a) Upon receiving notice of intent to abandon railroad rights-of-way from any railroad company, the department shall, upon receipt, notify:

- (1) the county executives, county surveyors, and cities and towns of the counties affected;
- (2) the department of commerce; and
- (3) the department of natural resources; of the notice.

(b) Within one (1) year of a final decision of the Interstate Commerce Commission permitting an abandonment of a railroad right-of-way, the railroad shall remove any crossing control device, railroad insignia, and rails on that portion of the right-of-way that serves as a public highway and reconstruct that part of the highway so that it conforms to the standards of the contiguous roadway. The Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the highway may restore the crossing if the unit:

- (1) adopts construction specifications for the project; and
- (2) enters into an agreement with the railroad concerning the project.

The cost of removing any crossing control device, railroad insignia, rails, or ties under this subsection must be paid by the railroad. The cost of reconstructing the highway surface on the right-of-way must be paid by the Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the crossing.

(c) If a railroad fails to comply with subsection (b), the Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the crossing may proceed with the removal and reconstruction work. The cost of the removal and reconstruction shall be documented by the agency performing the work and charged to the railroad. Work by the agency may not proceed until at least sixty (60) days after the railroad is notified in writing of the agency's intention to undertake the work.

(d) This section does not apply to an abandoned railroad right-of-way on which service is to be reinstated or continued.

(e) As used in this section, "crossing control device" means any traffic control device installed by the railroad and described in the National Railroad Association's manual, Train Operations, Control and Signals Committee, Railroad-Highway Grade-Crossing Protection, Bulletin No. 7, as an appropriate traffic control device.

(f) Costs not paid by a railroad under subsection (b) may be added to the railroad's property tax statement of current and delinquent taxes and special assessments under IC 6-1.1-22-8.

(g) Whenever the Indiana department of transportation notifies the department of natural resources that a railroad intends to abandon a railroad right-of-way under this section, the department of natural resources shall make a study of the feasibility of converting the right-of-way for recreational purposes. The study must be completed within ninety (90) days after receiving the notice from the Indiana department of transportation. If the department of natural resources finds that recreational use is feasible, the department of natural resources shall urge the appropriate state and local authorities to acquire the right-of-way for recreational purposes.

(Formerly: Acts 1973, P.L.65, SEC.1.) As amended by Acts 1980, P.L.74, SEC.39; Acts 1982, P.L.62, SEC.3; Acts 1982, P.L.75, SEC.1; P.L.63-1984, SEC.1; P.L.84-1986, SEC.1; P.L.384-1987(ss), SEC.30; P.L.8-1989, SEC.49; P.L.18-1990, SEC.35.

IC 8-3-1-21.2

Sec. 21.2. (a) The department may order the apportionment of costs that result from the restoration, under section 21.1(b) of this chapter, of grade crossings with abandoned railroads among the railroads and the public agencies. After receiving a petition from a railroad or an affected public agency, the department shall:

- (1) give notice of the pending action;
- (2) provide an opportunity for the affected parties to be heard by the commission;
- (3) apportion the costs among the railroad and the public agency according to section 21.1 of this chapter; and
- (4) adopt rules under IC 4-22-2 to establish the respective responsibilities of railroads and public agencies performing restoration work on grade crossings with abandoned railroads.

(b) The department shall determine the reasonableness of the cost of the restoration charged to the railroad under section 21.1(c) of this chapter if the railroad petitions for that determination.

As added by Acts 1977, P.L.106, SEC.1. Amended by P.L.63-1984, SEC.2; P.L.17-1985, SEC.5; P.L.384-1987(ss), SEC.31.

IC 8-3-1-21.3

Sec. 21.3. (a) When a public street or highway intersects with a railroad right-of-way that is not owned by a railroad, the public agency with jurisdiction over the street or highway may:

- (1) remove any crossing control devices;
- (2) remove railroad insignia, rails, or ties; or
- (3) reconstruct the highway so that it conforms with the standards of the intersecting street or highway.

(b) The public agency may not proceed under subsection (a) until the owner of the railroad right-of-way is given written notice of the agency's intention to undertake the work.

(c) The cost of the work shall be documented and charged to the owner, and if not paid by the owner, the cost may be added to the owner's property tax statement of current and delinquent taxes and special assessments under IC 6-1.1-22-8.

As added by P.L.95-1985, SEC.1.

IC 8-3-1-22

Sec. 22. If the department determines that the right-of-way of a railroad which intersects or crosses a public highway or street is abandoned, any unit of government may resurface that intersection or crossing.

As added by Acts 1982, P.L.75, SEC.2. Amended by P.L.384 1987(ss), SEC.32.

IC 8-3-1-23

Sec. 23. Any expense incurred by the department, either upon a complaint against a railroad or upon a petition of any railroad, shall be charged and paid in the manner provided for public utilities under IC 8-1-6.

As added by P.L.384-1987(ss), SEC.33.

IC 8-20-1-15

Sec. 15. A county highway right-of-way may not be laid out that is less than twenty (20) feet on each side of the centerline, exclusive of additional width required for cuts, fills, drainage, utilities, and public safety.

(Formerly: Acts1905, c.167, s.15; Acts 1961, c.137, s.1; Acts 1963, c.123, s.1.)

As amended by P.L.66-1984, SEC.118; P.L.86-1988, SEC.172; P.L.112-1995, SEC.2.

Roy M. ELDER, Plaintiff-Appellant v. BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, Indiana, Consisting of Larry R. Dean, Paul F. Garrett and Larry G. Coats, Defendant-Appellee

No. 1-685 A 147

Court of Appeals of Indiana, First District

490 N.E.2d 362; 1986 Ind. App. LEXIS 2468

March 24, 1986

SUBSEQUENT HISTORY: [**1] Rehearing Denied May 12, 1986; Transfer denied September 15, 1986

PRIOR HISTORY: Appeal from the Clark Superior Court No. 2 The Honorable James Kleopfer, Special Judge Cause No. 84-S2-143

DISPOSITION: Judgment reversed.

COUNSEL: Attorneys for Appellant: William F. Engebretson, Hanger, Engebretson & Mayer, Clarksville, Indiana

Attorney for Appellee: Thomas W. Fox, Clarksville, Indiana

JUDGES: Neal, J., Robertson, P.J., and Ratliff, J., concur.

OPINION BY: NEAL

OPINION: [*362]

STATEMENT OF THE CASE: Plaintiff-appellant, Roy M. Elder (Elder), appeals from an adverse judgment in an inverse condemnation action against the Board of County Commissioners of Clark County (County). We reverse.

STATEMENT OF THE FACTS: Elder owns a tract of land described as relevant here, as follows:

[*363] "Being a tract of land in Illinois Grant No. 20, lying and being south of the Charlestown and New Albany Road and north of the B. & O. Railroad, commencing at the intersection of said roads and running thence westerly along the south side of Charlestown and New Albany Road a distance of 512 feet, more or less, to a stake . . ."

Elder's property, purchased by him in 1964, abutted the south side of a [**2] 20-21 foot wide roadway, apparently an ancient turnpike with an approximate origin of 1850. The property, containing Elder's residence, extended to the edge of the road as it was physically located on the ground. The front yard, roughly 38 feet in depth from the house to the roadway, contained large trees, shrubs, landscaping, and other indicia of ownership and occupation, which indicated that the actual physical location of the property and the road had been settled many, many years prior to 1964. There is no evidence in any public record of a conveyance or condemnation, or of documents to create, locate or fix the width of the road, or of any public usage (usage) of the road exceeding its previous 21 foot width.

In 1981, the County embarked upon a program to widen the road to 40 feet. After obtaining a provisional right of drainage and temporary construction easements from Elder, the County, without permission, easement, grant or condemnation, took approximately 15 feet of Elder's yard, cut down some of his trees and shrubs, and constructed and widened the road. All the above evidence is conceded.

Elder brought suit for inverse condemnation seeking damages arising from the taking. [**3] The court ruled adversely (adversely) to him, stating that he had not proven the location of his property boundaries. We disagree.

ISSUES: Upon appeal Elder raises the following issues:

I. Whether the trial court erred in finding that a taking of Elder's property did not occur during the Charlestown-New Albany Pike expansion

II. Whether the trial court erred in finding that the northern boundary of Elder's property was ambiguous and indefinite

DISCUSSION AND DECISION: Issue I: Whether A "Taking" Occurred

Appellant first contends that he met his statutory burden of proof regarding the establishment of a taking in an inverse condemnation action. Such an action involves a bifurcated procedure. First, a taking must be established; then appraisers are appointed and damages assessed. *City of Hammond, Lake County v. Drangmeister* (1977), 173 Ind. App. 476, 364 N.E.2d 157, trans. denied. In order to establish a taking, the plaintiff must meet the test set out in IND. CODE 32-11-1-12: He must have an interest in the land; the land must either have been, or may be in the future, taken for a public use; and the land must not have been properly appropriated [**4] under law.

There is no question that the land in issue is currently servicing a public use as a public roadway. Likewise, there is no question that Elder owns the land in fee, though there is a dispute as to the exact location of its northern boundary. Thus the real issue is whether or not, at some point in time, the land was properly appropriated by the County. The County admits that no condemnation action was ever initiated to lawfully obtain the land. Rather it maintains that despite the fact that the road, prior to expansion, was 20 to 21 feet wide, a 40 foot right-of-way exists which enabled the County to expand the road 20 feet on either side of its centerline without constituting a taking. In support of its position the County presented evidence that its engineer had always thought that the road commanded a 40-foot right-of-way, and that everyone he knew thought the same thing. The county surveyor testified that he thought that the road initially had been a private turnpike and that every turnpike he knew of commanded a 40 foot [**364] right-of-way. He also produced two survey maps; one, completed by the Baltimore & Ohio Southwestern Railroad Company in 1918, representing [**5] an area 1,000 feet away from Elder's property; and another one, completed by the state in 1923 and revised in 1932, representing an area over a mile away from Elder's property. Those survey maps do not seem to be any part of a public record, and apparently merely existed in his office. The surveys do not state that a 40-foot right-of-way existed, rather the surveyor arrived at that conclusion by making certain calculations. In addition, he refused to authenticate the accuracy of the surveys.

As we have so often stated, upon review we neither reweigh the evidence nor judge the credibility of the witnesses. *Connell v. State* (1984), Ind., 470 N.E.2d 701; *Johnson v. State* (1982), Ind. App., 441 N.E.2d 1015. Our duty is not to sit as a trial court, but rather to correct errors of law and accept the trial court's findings of fact so long as they are supported by probative evidence. *Melloh v. Gladis* (1974), 261 Ind. 647, 309 N.E.2d 433. Regarding probative evidence, our review is limited to ascertaining if there is any evidence, if believed by the

trier of fact, which would sustain the judgment. *Blake v. Hosford* (1979), 180 Ind. App., 175, 387 N.E.2d 1335, trans. denied. [**6]

Two authorities exist which we believe are dispositive of this case. IND. CODE 8-20-1-15, the 20-year road law, provides as follows:

(a) All county highways laid out before April 15, 1905, according to law, or used as such for twenty (20) years or more, shall continue as originally located and as of their original width, respectively, until changed according to law.

(b) From and after January 1, 1962, no county highway shall be laid out which is less than twenty (20) feet on each side of the centerline of said county highway, exclusive of such additional width as may be required for cuts and fills. "

Anderson v. City of Huntington (1907), 40 Ind. App. 130, 81 N.E. 223 is a case nearly identical on its facts to the case at bar. The court, in ruling for the landowner, stated:

"That the Huntington and Goshen Road is a public highway, and was a public highway in front of appellant's property prior to the action of the city [sic] of Huntington in establishing Jefferson street [sic] thereon, cannot be controverted; but, its width and boundaries never having been established and determined by any competent authority, or recorded in any proper record, these [**7] boundaries must be determined by the use of the public. The way cannot be greater than the use. Where the boundary lines of a road have never been established by any competent authority, but the right of the public to travel over such road has been established by continuous usage, the width of such road is determined by the width of such use. *McCreery v. Fallis*, 162 Ind. 255 [67 N.E. 673]; *Hart v. Trustees*, 15 Ind. 226; *Board of Commissioners v. Huff*, 91 Ind. 333; *Epler v. Niman*, 5 Ind. 459; *Elliot, Roads and Streets* (2d ed.), Sec. 376-386. And immemorial fence lines of adjoining property owners will overcome any legendary opinions as to where the lines were primarily intended to be.

In the case before us, there was not a particle of evidence to show that the strip of ground appropriated by appellee that lay inside of the fence line of appellant was ever used by the public. On the contrary, the uncontradicted evidence clearly shows that the public never had used, but always had been excluded from, all that portion of appellant's lot that lay east of the fence forming the eastern boundary of the Goshen Road. It is true that, as a rule, occupancy [**8] of a street or road that has once been established by dedication, prescription or proper legal proceedings will not invest the occupant with title, or divest the public [**365] of its rights in the way, although, as is shown in the case of *Hamilton v. State*, supra, [(1885), 106 Ind. 361, 7 N.E. 9] under certain special circumstances, the public may be estopped from asserting these rights. But in the case before us there is no question of the occupancy of an

established way. The Goshen Road, as established by the use of the public, and this is the only way it has ever been established, was wholly without the fence line of appellant. What lay east of that line belonged to appellant, and the public never had, and never acquired, any interest in it until appellee summarily wrested it from her, laid its sidewalk, and invited the public to enter.

Witnesses were permitted to testify to their understanding or supposition as to how wide the Goshen Road was, all over the objections of appellant. This evidence was incompetent, under the circumstances of this case. The question was not how wide the Goshen Road was intended or supposed to be, but had the public ever acquired [**9] by dedication, prescription, or legal proceedings a right to use the strip of appellant's ground in question as a public way. Under certain conditions, ancient lines or locations may be established by reputation; but evidence that this road was supposed to be 60 feet wide, when the fences forming its boundary as far back as anyone can remember show it was much less than that, can hardly be said to have any pertinency to the issue in this case."

As noted, the physical location of the road on the ground, its width, and Elder's property as it existed on the ground in time immemorial is not disputed. We hold that upon the authority of IND. CODE 8-20-1-15 and Anderson, supra, Elder's title may not be defeated by the evidence adduced by the County. None of that evidence was recorded in a proper record which would be brought into Elder's abstract as notice of the County's claim of a 40-foot right-of-way. A contrary ruling would drastically disturb settled land titles. We further hold that the County owned only that land physically occupied by the road and no more. Elder owned that land laying south of the southern edge of the road.

From what we have said there is no need to discuss [**10] Issue II. For all of the above reasons this cause is reversed and the trial court is ordered to grant a new trial and proceed in a manner not inconsistent with this opinion.

Judgment Reversed.

Robertson, P.J. and Ratliff, J., concur.

Used with permission.

IC 8-20-1-15.5

Sec. 15.5. (a) As used in this section, "apparent right-of-way" means the location and width of county highway right-of-way for purposes of use and control of the right-of-way by the county executive.

(b) A county executive may establish the apparent right-of-way of a county highway. However, the width of the apparent right-of-way may not exceed twenty (20) feet on each side of the centerline exclusive of additional width required for cuts, fills, drainage, utilities, and public safety.

(c) A county executive that desires to establish the apparent right-of-way of a county highway shall do the following:

(1) Make a preliminary finding of the apparent right-of-way by using the best available evidence, including physical observation from the ground or air

(2) From the preliminary finding of the apparent right-of-way

(A) prepare a map and a written description of the apparent right-of-way;

(B) give notice of the preliminary finding by publishing the map and the written description in the manner provided by law; and

(C) give notice of the preliminary finding by certified mail to the owners of land, according to the records of the county auditor, that abuts the apparent right-of-way.

(3) Conduct a public hearing at which owners of land in the county may

(A) object to the preliminary finding;

(B) present evidence in support of or in opposition to the preliminary finding; and

(C) propose changes to the preliminary finding.

(4) After the hearing under subdivision (3), revise the preliminary finding of the apparent right-of-way, if necessary

(5) Adopt an ordinance to establish the revised finding as the apparent right-of-way

(6) Record with the county recorder a map and a written description of the apparent right-of-way as established by the ordinance

(d) The apparent right-of-way of a county highway established under this section is the right-of-way for purposes of use and control of a county highway by the county executive.

(e) If the apparent right-of-way exceeds the legal right-of-way, then the county must proceed under IC 36-1-4-5 and IC 8-20-3-1 to acquire the apparent right-of-way.

ANDERSON v. CITY OF HUNTINGTON. No. 5,821.

COURT OF APPEALS OF INDIANA

40 Ind. App. 130; 81 N.E. 223; 1907 Ind. App. LEXIS 29
May 14, 1907, Filed

PRIOR HISTORY: [***1] From Huntington Circuit Court; J. B. Kenner, Special Judge.

Action by Margery R. Anderson against the city of Huntington. From a judgment for defendant, plaintiff appeals

DISPOSITION: Reversed.

HEADNOTES: APPEAL. – Weighing Evidence. –The Appellate Court will not weigh conflicting oral evidence.

HIGHWAYS. – Width. – Use. – The boundaries of a highway laid out without any established width are determined by the limits of the way actually used.

BOUNDARIES. – Fences. – Ancient Tradition. – Fence lines indicating boundaries will prevail over tradition as to where such boundaries were intended to be.

HIGHWAYS. – Boundaries. – Encroachment. – Acquiescence. – Where a fence has from time immemorial marked the boundary line of a highway, the public cannot, because of long acquiescence and presumptive abandonment, go beyond such fence and assert another as the true boundary line of the highway.

EVIDENCE. – Understanding of Width of Highway. – Evidence of the witness's understanding of the width of a highway laid out before his birth is incompetent, where fences had marked the boundaries of such highway from time immemorial, and where such highway was not established with any definite width.

COUNSEL: M. L. Spencer and W. A. Branyan, for appellant. Fred H. Bowers and Milo Feightner, for appellee.

JUDGES: HADLEY, J.

OPINION BY: HADLEY

OPINION: [*131] [**223] HADLEY, J.—This was an action by appellant against appellee to recover damages for appropriation of appellant's real estate to be used as a public street of said city. The evidence discloses that appellant owns a tract of land in the city of Huntington, fronting on a road known as the Goshen road until the corporate limits of the city were extended to include appellant's property, when the said Goshen road became and was known as Jefferson street. The Goshen road was surveyed under an act of the General Assembly of the State of Indiana of 1834 (Acts 1834, p. 308), which authorized the surveying and laying out of a road from Ft. Recovery, in Ohio, down the Wabash river, to Huntington, and from Huntington to Goshen, the road was surveyed and laid out in 1837. The width of said road was never defined nor established by any proper authority, and [***2] no record of said width was ever made, although the line of the road was recorded. The evidence discloses a sort of legend that the road was sixty feet wide, but the evidence shows that at no place outside of the town of Huntington was said road sixty feet wide, in some places being as narrow as thirty-eight and one-half feet, and ranging from that to fifty-seven and one-half feet. Appellant moved on the lot in question in 1863, and continuously resided thereon until the filing of this action. There was a fence along the front of said lot, which fence was thirty feet east of the west line of appellant's tract, as shown by her deed. This fence was parallel with the said tract line and the Goshen road, forming the eastern boundary of said road, and was in line with the other fences above and below it, when

appellant moved there. It was maintained continuously in the same place until it was torn [*132] down in 1895 or 1896. When the fence was removed, some of the posts were left standing, and appellant continued to use the whole of said lot within the line of said fence as a lawn, having trees and shrubbery thereon.

The appellee passed a proper order for the improvement of Jefferson [***3] street along appellant's said lot. The city engineer surveyed said street and established it at the regular width of sixty feet, and, in doing so, ran the east line of said street from seven to ten feet east of the line of said fence, and, under the direction of the city, a sidewalk was put down along said line so established, the sidewalk being wholly within the line of said old fence. In constructing the sidewalk, a large tree, which had been planted by appellant's husband in 1867, and which stood inside of said fence line and in the line of said sidewalk, was removed. This tree was large and furnished shade and protection to the home of appellant. Appellee did not condemn any of said property so taken, nor did it offer to pay any damages nor make any compensation for said invasion. There was no evidence introduced by anyone that any portion of the land within said fence of appellant had ever been used by the public; but all the evidence was to the effect that the public had been excluded from all of that portion of the land so taken that lay within said fence line of appellant, which fence had been maintained at that particular place as far back as anyone could remember, until removed [***4] as heretofore stated. The court made a special finding of facts and stated conclusions of law thereon against appellant. Appellant moved for a new trial, which motion was overruled and judgment was rendered against appellant according to the conclusions of law.

The rulings of the court in its conclusions of law and in overruling appellant's motion for a new trial are assigned as error. The motion for a new trial brings into question the sufficiency of the evidence to sustain the finding. This court will not weigh the evidence in a [*133] case of this character. It is only when there is an entire lack of evidence that this court will reverse a cause of this kind for insufficiency of evidence.

That the Huntington and Goshen road is a public highway, and was a public highway in front of appellant's property prior to the action [**224] of the city of Huntington in establishing Jefferson street thereon, cannot be controverted. But its width and boundaries never having been established and determined by any competent authority, or recorded in any proper record, these boundaries must be determined by the use by the public. The way cannot be greater than the use.

Where the boundary [***5] lines of a road never have been established by any competent authority, but the right of the public to travel over such road has been established by continuous usage, the width of such road

is determined by the width of such use. *McCreery v. Fallis* (1904), 162 Ind. 255, 67 N.E. 673; *Hart v.*

Trustees, etc. (1860), 15 Ind. 226; *Board, etc., v. Huff* (1883), 91 Ind. 333; *Epler v. Niman* (1854), 5 Ind. 459; *Elliott, Roads and Sts.* (2d ed.), §§ 376–386.

And immemorial fence lines of adjoining property owners will overcome any legendary opinions as to where the lines were primarily intended to be. The evidence shows that a short distance from the township line in said county this road is only thirty-eight and one-half feet wide. If the fence lines at this point have been maintained as they now are so long that “the mind of man runneth not to the contrary,” we take it no one would contend that the county commissioners could declare that said road was sixty feet wide at such place, and appropriate sufficient land from the adjoining property owners to make such road sixty feet wide, without any legal proceedings [***6] or process. This illustration illuminates the situation in front of appellant’s lot. As far back as anyone could remember, the east line of said road, as used by the public, had been defined by the fence along the west side of appellant’s [*134] lot. No one constituting the public had ever contested the right of appellant or appellant’s grantors so to maintain said fence. The fence was in line with other fences on either side of said lot. If the east line of said road had been originally established where it is now sought to place it, but for all the years since 1837 it had been within the line of appellant’s fence, as it was in this case, the public would have been precluded from now claiming the strip within said fence, for the reason that it would be presumed that by its long acquiescence it had abandoned so much of said highway. *Board, etc., v. Huff*, *supra*; *Hamilton v. State* (1886), 106 Ind. 361, 7 N.E. 9. In the case last cited the court say: “In such a case as we have assumed, a presumption of abandonment will be indulged, and when to disturb long-established lines would involve criminal consequences or work serious injury to valuable [***7] improvements made in good faith, such presumption will be conclusive.” In the case before us, there was not a particle of evidence to show that the strip of ground appropriated by appellee that lay inside of the fence line of appellant was ever used by the public. On the contrary, the uncontradicted evidence clearly shows that the public never had used, but always had been excluded from, all that portion of appellant’s lot that lay east of the fence forming the eastern boundary of the Goshen road. It is true that, as a rule, occupancy of a street or road that has once been established by dedication, prescription, or proper legal proceedings will not invest the occupant with title, or divest the public of its rights in the way, although, as is shown in the case of *Hamilton v. State*, *supra*, under certain special circumstances, the public may be estopped from asserting these rights. But in the case before us there is no question of the occupancy of an established way.

The Goshen road, as established by the use of the public—and this is the only way it has ever been established—was wholly without the fence line of appellant. What lay east [*135] of that line [***8] belonged to appellant, and the public never had and never acquired any interest in it until appellee summarily wrested it from her, laid its sidewalk, and invited the public to enter. By item two of the special findings, the court finds that appellant’s said fence was located at the time, and at the distance from the west line of appellant’s tract, and was maintained, as above stated, and adds: “But said fence was within the sixty feet known as the Goshen road.”

Item five finds that said road was laid out in 1837; that the recorded survey does not give its width, “but, as a matter of fact, it was actually laid out, where the same passes through Huntington county, to the width of sixty feet, and that the public accepted and used said highway as thus laid out.” There is no evidence to support these findings. There is no evidence that the eastern boundary was ever any other than appellant’s fence line.

Witnesses were permitted to testify to their understanding or supposition as to how wide the Goshen road was, all over the objections of appellant. This evidence was incompetent, under the circumstances of this case. The question was not how wide the Goshen road was intended or supposed [***9] to be, but had the public ever acquired by dedication, prescription, or legal proceedings a right to use the strip of appellant’s ground in question as a public way. Under certain conditions, ancient lines or locations may be established by reputation; but evidence that this road was supposed to be sixty feet wide, when the fences forming its boundary as far back as anyone can remember show it was much less than that, can hardly be said to have any pertinency to the issue in this case.

Judgment reversed, with instructions to the court below to grant a new trial.

Used with Permission.

IC 8-20-3-1

Sec. 1. A county executive may acquire the lands and rights necessary to widen, straighten, or change the route of any county highway. If the executive is unable to agree with the owner of the land or right on damages or the purchase price, the executive may exercise eminent domain to condemn the land or right necessary to carry out the provisions of this section.

(Formerly: *Acts 1935, c.94, s.1.*) As amended by *P.L.66-1984, SEC.135; P.L.86-1988, SEC.218.*

IC 8-23-2-6

Sec. 6. (a) The department, through the commissioner or the commissioner’s designee, may do the following:

(1) Acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or encumber property to carry out its responsibilities

(2) Contract with persons outside the department to do those things that in the commissioner's opinion cannot be adequately or efficiently performed by the department

(3) Enter into

(A) a contract with the Indiana transportation finance authority under IC 8-9.5-8-7; or

(B) a lease with the Indiana transportation finance authority under IC 8-9.5-8-8; for the construction, reconstruction, improvement, maintenance, repair, or operation of toll road projects under IC 8-15-2 and toll bridges under IC 8-16-1.

(4) Sue and be sued, including, with the approval of the attorney general, the compromise of any claims of the department

(5) Hire attorneys

(6) Perform all functions pertaining to the acquisition of property for transportation purposes, including the compromise of any claims for compensation

(7) Hold investigations and hearings concerning matters covered by orders and rules of the department

(8) Execute all documents and instruments necessary to carry out its responsibilities

(9) Make contracts and expenditures, perform acts, enter into agreements, and make rules, orders, and findings that are necessary to comply with all laws, rules, orders, findings, interpretations, and regulations promulgated by the federal government in order to

(A) qualify the department for; and

(B) receive; federal government funding on a full or participating basis.

(10) Adopt rules under IC 4-22-2 to carry out its responsibilities

(11) Establish regional offices

(12) Adopt a seal

(13) Perform all actions necessary to carry out the department's responsibilities

(14) Order a utility to relocate the utility's facilities and coordinate the relocation of customer service facilities if

(A) the facilities are located in a highway, street, or road; and

(B) the department determines that the facilities will interfere with a planned highway or bridge construction or improvement project funded by the department.

(15) Reimburse a utility

(A) in whole or in part for extraordinary costs of relocation of facilities;

(B) in whole for unnecessary relocations;

(C) in accordance with IC 8-23-26-12 and IC 8-23-26-13;

(D) in whole for relocations covered by IC 8-1-9; and

(E) to the extent that a relocation is a taking of property without just compensation.

(16) Provide state matching funds and undertake any surface transportation project eligible for funding under federal law. However, money from the state highway fund and the state highway road construction and improvement fund may not be used to provide operating subsidies to support a public transportation system or a commuter transportation system.

(b) In the performance of contracts and leases with the Indiana transportation finance authority, the department has authority under IC 8-15-2, in the case of toll road projects and IC 8-16-1, in the case of toll bridges necessary to carry out the terms and conditions of those contracts and leases.

(c) The department shall

(1) classify as confidential any estimate of cost prepared in conjunction with analyzing competitive bids for projects until a bid below the estimate of cost is read at the bid opening;

(2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division; and

(3) classify as confidential records that are the product of systems designed to detect collusion in state procurement and contracting that, if made public, could impede detection of collusive behavior in securing state contracts. This subsection does not apply to parcel files of public agencies or affect IC 8-23-7-10.

As added by P.L.112-1989, SEC.5. Amended by P.L.18-1990, SEC.208; P.L.2-1991, SEC.63; P.L.63-1992, SEC.3; P.L.39-1993, SEC.3; P.L.109-1993, SEC.1.

IC 32-5-1-1

Sec. 1. The right-of-way, air, light or other easement from, in, upon, or over, the land of another, shall not be acquired by adverse use, unless such use shall have been continued uninterruptedly for twenty (20) years.

(Formerly: Acts 1852, IRS, c.30, s.1.)

IC 32-5-3-1. Easements: Way of Necessity When Landlocked by Stream, Ditch or Dam Changes.

Sec. 1. In all cases where, heretofore or hereafter, the lands belonging to a landowner or to landowners in this state, shall have been shut off from a public

highway, because of the straightening of any stream, or the construction of any ditch, under the laws of the State of Indiana, or by the erection of any dam constructed by the State of Indiana or the United States or any of their agencies or political subdivisions under the laws of the state of Indiana, and in case the owner or owners of lands thus affected can not secure an easement or right-of-way on and over the lands adjacent thereto, and intervening between such lands and the public highways most convenient thereto, either because the adjacent and intervening landowner or landowners refuse to grant such easement, or because the interested parties can not agree upon the consideration to be paid by the landowner or landowners so deprived of such access to the highway, he or they shall have such right of easement established as a way of necessity under the provisions of IC 1971, 32-11-1.

(Formerly: Acts 1935, c.56, s.1; Acts 1973, P.L.302, SEC.1.)

Anderson v. Buchanan and Others.

SUPREME COURT OF INDIANA

8 Ind. 122; 1856 Ind. LEXIS 437

November 27, 1856, Filed

PRIOR HISTORY: [**1] ERROR to the Switzerland Circuit Court

DISPOSITION: The judgment is affirmed with costs.

HEADNOTES: Trespass – Right-of-Way. – Trespass quare clausum fregit. Pleas setting up that the defendant purchased of the plaintiff's ancestor the land adjoining that on which the alleged trespass was committed; and that there was no so convenient way to said ground purchased as across the remaining land of the plaintiff, and hence the defendant crossed said land, as well he might, etc. – which was the trespass, etc. Demurrers sustained. Held, that the pleas were bad because they set up a convenience, simply, and not a necessity, and that the demurrers were properly sustained. Held, also, that a right-of-way may arise from necessity.

Trespass – Title to Real Estate – Costs. – Where in an action of trespass the question is whether the locus in quo is a highway or not, the title to real estate is regarded as in issue so far as to carry full costs to the plaintiff, under the statute, on a recovery of any amount.

COUNSEL: J. Sullivan, for the plaintiff. J. G. Marshall, for the defendants.

JUDGES: Perkins, J.

OPINION BY: PERKINS

OPINION: [*123] Perkins, J.—Trespass quare clausum fregit. Issues of fact were tried by a jury, and found for the plaintiffs, with one-cent damages. The Court gave the plaintiffs full costs. One of these issues was made upon the question of a legally established highway. Two pleas were demurred to, and the demurrers sustained.

Those pleas set up that the defendant purchased of the ancestor of the plaintiffs a tract of ground adjoining that on which the alleged trespass was committed; that there was no so “convenient way” to said ground purchased as across the remaining land of the plaintiffs, and hence, the defendant crossed said land, as well he might, etc.—which was the trespass, etc.

The pleas meant to set up in defense, and rely upon, a right-of-way of necessity. Such a right may arise from necessity. “Thus, if a man sells land to another which is wholly surrounded by his own land, in this case the purchaser is entitled to a right-of-way over the other’s ground to arrive at his own land.” [**2] But necessity, not convenience, is the foundation of the right. 3 Kent, pp. 420, 424. The pleas in this case demurred to were bad because they set up a convenience simply, and not a necessity. The demurrers were rightly sustained. The remaining question is that of costs. Section 398, 2 R. S. p. 127, similar to the provision of 1845, enacts that, “In all actions for damages solely, not arising out of contract, if the plaintiff do not recover 5 dollars damages, he shall recover no more costs than damages, except in actions for injuries to character and false imprisonment, and where the title to real estate comes in question.”

In this case the question fairly arose upon the trial under the issues of fact, whether a highway had not been theretofore legally established in the place where the alleged trespass was committed; and the inquiry now is, was that a question upon the title to real estate within the meaning of the statute? There are different titles to real estate recognized in legal parlance and proceedings, viz., fee-simple titles, legal, possessory, equitable titles. Actions of ejectment are to try legal possessory titles, and we say the title in such cases is in issue. [**3]

[*124] We think where the question of highway or not arises, the title, that is, the right of possession, of user, may be fairly said to be in issue. The judgment for the plaintiffs for full costs was right. Per Curiam. The judgment is affirmed with costs. Filed Nov. 27, 1856.

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Steel v. Grigsby et al.No.8692.

SUPREME COURT OF INDIANA

79 Ind. 184; 1881 Ind. LEXIS 751

November Term, 1881, Decided

PRIOR HISTORY: [**1] From the Posey Circuit Court

DISPOSITION: The judgment is affirmed, at appellant’s costs.

HEADNOTES: Easement. – Prescription. – Way of Necessity. – Complaint. – Evidence. – Where a complaint to have a right-of-way declared a permanent easement shows that for more than thirty years plaintiff, and those under whom he claims, have used it under claim of right, having no other way from his land to the highway;

that the defendant has denied his right and fenced up the way; and that without the way his land would be of but little value and he would be subjected to great hardships and be deprived of the use of his land as a home, evidence of a way of necessity is admissible. Special Finding. – General Finding. – Practice. – Where the record does not show that either party requested the court to make a special finding, the finding will be held to be a general finding only.

COUNSEL: E. M. Spencer and W. P. Edson, for appellant. A. P. Hovey and G. V. Menzies, for appellees.

JUDGES: Franklin, C.

OPINION BY: FRANKLIN

OPINION: [*184] Franklin, C.—This is an action by the appellees against the appellant to have a right-of-way declared a permanent easement. For some years prior to 1868, one James T. Overton owned a certain eighty acres of land, composed of the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter, of a certain section. That the New Harmony and Princeton public highway ran east and west on the north line of said land. That ever since about the year 1850, there was a road or passway, though not worked and improved as a public highway, running north [*185] and south near to and a part of the way on the east line thereof, from said New Harmony road to a little town some distance south of said land, called Stewartsville; there had also for a similar length of time been a road or passway in an east direction from this north and south road, opposite the southern half of said eighty acres of land. Mr. Overton built his residence near [*2] the center of the southern half of said land. In the year 1868, he deeded said southern half of said land to his daughters, Rachel and her sister, the sister afterwards deeded her interest to Rachel, who is co-appellee herein with her husband (James H. Grigsby). That he continued to own the north half of said land, and live in the house upon the land deeded to his daughters until the time of his death. That he had changed the location of parts of this north and south road on said north half of said land two or three times, first in 1857, and last shortly after he had deeded the south half to his daughters; each time straightening the road as he improved the land, by placing parts of it nearer the eastern line.

Mr. Overton died in 1870, and appellant became the owner of the north half of said land by purchase from his administrator and the widow. No question is raised as to the titles to the lands.

Some four or five years after Overton's death, the eastern road and the southern end of said north and south road from the southern half of said land were both closed up and fenced across, leaving the only road as an outlet to said southern half of said land, the north part of said north [*3] and south road.

After the death of said Overton, said appellant was appointed guardian of said Rachel, and he continued to act as such. Rachel married in 1878, and, shortly after her marriage, appellant fenced up and enclosed so much of said north and south road as was on his land. Hence this suit. A demurrer was filed to the complaint, overruled, exception reserved, and an issue formed by a denial; trial by court, finding for appellees, motion for a new trial overruled, with an exception, and judgment for appellees.

[*186] The error assigned in this court is the overruling of the motion for a new trial.

Appellant's counsel contend, that, while the complaint shows a right-of-way by prescription, it does not state facts sufficient to establish a right-of-way by necessity, and that the testimony tending to show a right-of-way by necessity was improperly admitted; and, as the court specially found that appellees had a right-of-way by necessity, the judgment below ought to be reversed.

Appellees' counsel have not favored us with a brief giving us their views and authorities; therefore, we know not what they might contend for. So far as the special finding of the court is concerned, [*4] the record does not show that either party requested the court to make a special finding. It will therefore be disregarded, and the finding only held to be a general finding for the appellees. See section 341, 2 R. S. 1876, p. 174.

The complaint substantially states, in relation to the right-of-way, "that for more than thirty-five years," etc., "the said Rachel and those under whom she claims title, have continuously and uninterruptedly passed to and from her land and residence," etc., "over and upon said road and easement over the land of the defendant, under claim of right to, and as the owners of said right-of-way." "That during all of said time said Rachel and those under whom she claims title have had no other road or passway, or means of getting to and from the said land and residence to said public highway." Concluding by alleging that appellant had denied her the right to pass over the road, and had so fenced it as to prevent its use; and that without said easement, road or passway, her land would be of but little value, and that she would be subjected to great hardships and be deprived of the use of her land as a home.

This complaint is not based alone upon a prescriptive [*5] right by user for twenty years. Its general allegations are comprehensive enough to include the right-of-way derived by any of the well-recognized means—by grant, prescription or necessity. [*187] If defendant desired the allegations to be made more specific, he ought to have made a motion to that effect. This complaint, though less specific, substantially agrees with the several paragraphs of the complaint in the case of *Sanxay v. Hunger*, 42 Ind. 44; which was held by this court to be sufficient for a right-of-way by necessity. See the case of *Stewart v. Hartman*, 46 Ind. 331.

In the case of *Anderson v. Buchanan*, 8 Ind. 132, we find an endorsement of the following quotation from 3 Kent, p. 420, 424: "Thus, if a man sells land to another which is wholly surrounded by his own land, in this case the purchaser is entitled to a right-of-way over the other's ground to arrive at his own land."

In 2 *Bouvier's Institutes*, p. 190, the learned author says: "Whenever land is completely enclosed by the lands of others, so that no access can be had to the public highway, a way of necessity may be claimed," citing the following authorities: *M'Donald v. Lindall*, [**6] 3 Rawle 492; *Allen v. Kincaid*, 2 Fairf. 156; *Lawton v. Rivers*, 2 McCord 445; *Turnbull v. Rivers*, 3 McCord 131; *Russell v. Jackson*, 2 Pick. 576; *Jetter v. Mann*, 2 Hill, S. C. 641.

The following questions to witness were objected to by appellant:

"State what, if any, road or way there is now, or ever was from the plaintiff's, Rachel's, land to any public road, except the right-of-way or easement over the defendant's, Steel's, land to the New Harmony road.

"What, if any, public road or right-of-way ever existed from Rachel Grigsby's land, except the way or easement over the defendant's land, to the New Harmony road?"

Under the comprehensive allegations of this complaint, as before stated, we think these questions and the answers thereto were proper. Because the allegations of a complaint are general, that is no reason why testimony applicable to them should be rejected. There was evidence tending to show that Mr. Overton, while he was building the fence on the east side of the [*188] north half of said eighty acres, and straightening the road so as to place parts of it nearer the east line, declared his intention to keep a road there from [**7] the house to the New Harmony road.

We think the evidence tended clearly to support the finding of the court; and there was no error in overruling the motion for a new trial. The judgment below ought to be affirmed.

Per Curiam.—It is therefore ordered, upon the foregoing opinion, that the judgment below be, and it is in all things, affirmed, at appellant's costs.

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IC 36-9-2-6

Sec. 6. A unit may grant rights-of-way through, under, or over public ways.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-6

IC 36-9-6-4

Sec. 4. The works board may condemn, rent, or purchase any real or personal property needed by the city for any public use, unless a different provision for purchase is made by statute or ordinance. However, the city legislative body may by ordinance

(1) require that these condemnations, rentals, or purchases be included in a long-range capital expenditure program to be proposed by the works board and updated as required by the legislative body, but at least annually;

(2) require the works board to estimate, at least annually, expenditures needed for condemnations, rentals, and purchases for each successive fiscal year;

(3) approve, amend, or reject all or part of the long-range capital expenditure program and the proposed annual expenditures, before or during the adoption of the city budget; and

(4) specify the manner in which the works board must itemize the estimates of capital program expenditures for each fiscal year.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.45.

IC 36-9-27-71

Sec. 71. (a) When, in the construction or reconstruction of a regulated drain, the county surveyor determines that the proposed drain will cross a public highway or the right-of-way of a railroad company at a point where

(1) there is no crossing; or

(2) the crossing will not adequately handle or will be endangered by the flow of water from the drain when completed; the county surveyor shall include in the plans the grade and cross-section requirements for a new crossing, or the requirements for altering, enlarging, repairing, or replacing the crossing. The surveyor shall mail a copy of the requirements addressed to the owner of the highway or right-of-way.

(b) When requested by the owner of the highway or right-of-way, the county surveyor shall meet with the owner at a time and place to be fixed by the surveyor. The surveyor shall hear objections to the requirements, and may then change the requirements as justice may require.

(c) When the board finds that in the construction, reconstruction, or maintenance of a regulated drain it is necessary to

(1) alter, enlarge, repair, or replace a crossing; or

(2) construct a new crossing where none existed before; the cost of the work on the crossing shall be

paid by the owner of the public highway. This cost may not be considered by the county surveyor or by the board in determining the cost of the work on the drain or in assessing benefits and damages. However, if it is necessary for the owner of a public highway to construct a new crossing because of a cut-off for the purpose of shortening or straightening a regulated drain, the owner of the public highway shall pay one-half (1/2) of the cost of the new crossing, and the remainder shall be included in the cost of the work on the drain.

(d) A railroad company with a right-of-way that is

(1) crossed by the construction of a regulated drain; or

(2) affected by the altering or enlarging of a crossing; shall pay one-half (1/2) of the cost of the work on the crossing and the remainder shall be included in the cost of the work on the drain.

(e) If the county surveyor is registered under IC 25-31, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced, or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(f) If the county surveyor is registered under IC 25-21.5, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

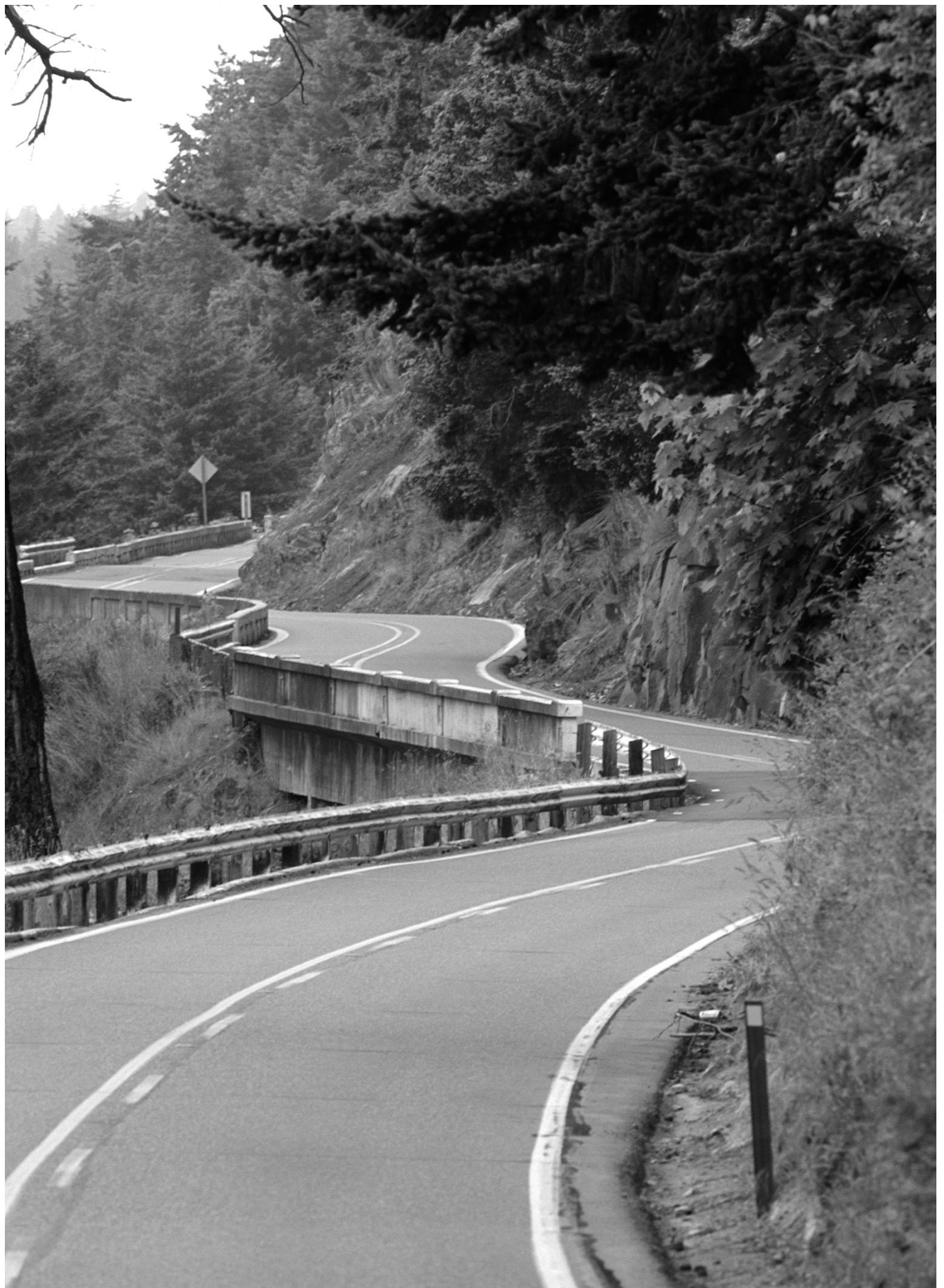
(g) Approval of the plans and hydraulic data by a person who is registered under IC 25-21.5 or IC 25-31 is required before the work can take place. However, if the county surveyor is not registered under IC 25-21.5 or IC 25-31, a registered person who is selected under section 30 of this chapter shall

(1) review and approve or disapprove the plans and specifications described in this subsection;

(2) inform the county surveyor in writing of the approval or disapproval; and

(3) submit all plans, specifications, and hydraulic data along with the approval or disapproval.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.5; P.L.76-1989, SEC.7; P.L.154-1993, SEC.7; P.L.2-1997, SEC.86; P.L.2-1998, SEC.89; P.L.241-1999, SEC.5; P.L.276-2001, SEC.15.





Management of the Local Road and Street Effort

Introduction

In a dynamic world of work, the management task is something like trying to paint a moving train. The task is dynamic, changing and pervasive. Management is most often described as the process of getting things done through others. Its study began in earnest during the Industrial Revolution and continues today in a global and high technology environment. Management takes place within organizations which can be either traditional or dynamic. The road and street organization tends to be traditional but the environment in which it operates drives some organizations to become more dynamic. The human relations and organizational behavior aspects of organizations complete this picture. The definition and descriptions of the functions of management have varied over the years. Yes, there were once seven or more management functions described in the literature, but now management writers may discuss only four or five managerial functions. The most commonly described are planning, organizing, leading and controlling. These four include functions once listed separately by authors of the 60's and 70's. The old staffing function which included Personnel (Human Resources), and training, and those of controlling such as financial management are now activities folded under the function of organizing. These important areas are still inherent management tasks. Successful administration and management of the road and street department is supported by effective training at all levels. A ten-step training model is used in this chapter to illustrate assessment and analysis to determine training needs and programming. Available training resources are highlighted in the model, and resources available are identified. Indiana Local Technical Assistance Program Center (IN-LTAP) at Purdue University is "on the point" in providing training resources to Indiana's road and street organizations. Professional development and continuing education resources are also available through the Statewide Technology program and Purdue and other Indiana community college resources.

Established in 1913 by the Indiana General Assembly, the Purdue Road School provides an outstanding menu of training and education possibilities for Indiana's local road and street officials, and members of the transportation industry. In addition to more traditional lecture and demonstration settings, the Road School roundtables are a venue for sharing experiences, expertise and problem solutions. Road School is a highly effective technology transfer program and it augments agency and departmental training and education. (Purdue University; Purdue Road School).

Management Functions

A useful working definition: Most common is the idea of working through others to accomplish missions, objectives and goals. The authors Koontz, O'Donnell and Weihrich in their classic, *Management*, take a functional approach to the discussion. The approach is useful because it describes what managers and leaders do, and they say it aids in "classifying knowledge." This is an indispensable approach to developing a science of management (*Management*, 79). The functions of the manager differ from enterprise or organizational activities and from tasks such as selling, accounting or manufacturing. Let's take a look at the functions of management; planning, organizing, leading and controlling.

Planning is the process of deciding in advance what is to be done, when to do it, and who is to do it. Good planning has four major aspects:

- contributing to achievement of objectives
- pervasiveness
- primacy
- efficiency

An explanation is in order. Every plan exists as a guide to accomplishing organizational objectives. Planning logically precedes the execution of other management activities. Planning pervades all other management functions. Planning is a continuous process. Planning is accomplished on a daily, weekly, and yearly basis. Short-range plans may have a horizon of weeks or months, while long-range and strategic plans may have a horizon of two to even five or ten years. Finally, a plan's efficiency is measured by how well it contributes to organizational objectives and mission accomplishment. More familiar to the road and street official is the asset management process, which provides the tools and techniques for efficient, effective road and street planning. A database and the ability to analyze its information are needed to provide planning information for decision making. Transportation budget, financial projections, and road and bridge inventories contain information required for planning.

A Word about Planning Assumptions. Assumptions are statements or premises about expectations. Valid assumptions (premises) are necessary to assist managers dealing with

uncertainty. For instance, the national government's appropriation delays require state and local agencies to make assumptions about future federal funding support. Valid assumptions are those which are logical and which have a positive connection with overall objectives. Subjective consideration of the known supporting facts and probabilities of an event occurring is required to complete a plan. The plan prior to execution is buttressed by use of this process.

The planning process should also produce at least two alternative courses of action. The ability to develop and analyze alternative courses of action is important in the planning process. The best and selected course of action selected is the objective statement of the plan. In this process, each stated alternative is analyzed in light of the current and projected environment including advantages and disadvantages of each. The result is more informed decision making. The discussion in Chapter 5 reviews this process in the context of transportation planning. This flow chart is usable in any context and in any detail.

Organizing is another function which requires thought and resource analysis.

Organizing is the structuring and ordering of the association of functions and activities necessary to attain organizational objectives. Organizational structure is effective if it facilitates the attainment of the objectives of the organization and does so at a minimum cost. What will the organization look like? There are no 'final' answers to the challenge of organizing local road and street entities, whether large or small. Peter Drucker states that: "The best structure will not guarantee results and performance. But the wrong structure is a guarantee of non performance." (*Management, Tasks, Responsibilities, and Practices*, 519)

Span of management control issues affect the organizing decision. Just how many people or functions can a single manager effectively manage? Although we like to think we can do it all, this span of control is limited by the environment, the complexity of the task, and the ability of the manager. Human resource constraints interplay here. The real world of road and street work is one of few people and many tasks. Technology and productivity enhancement offset the shortage of human resources, albeit this can only be taken so far.

Another span of control issue is that of authority. Managers require the authority to accomplish objectives within the organizational framework. This power is conferred upon an individual as a result of the position occupied in the organization. This type of authority is sometimes referred to as position power; the power resulting from the position itself. The study of authority and power is much more complicated. Clear lines of authority can increase the effectiveness of decision making and internal communications. The personal leadership style and characteristics of the leader are important elements in developing subordinate supervisors, and in determining leadership effectiveness.

The older management writings included the staffing function which is now grouped under the organizing function. This important aspect of the organizing function is worth more treatment. It encompasses the process of defining and filling

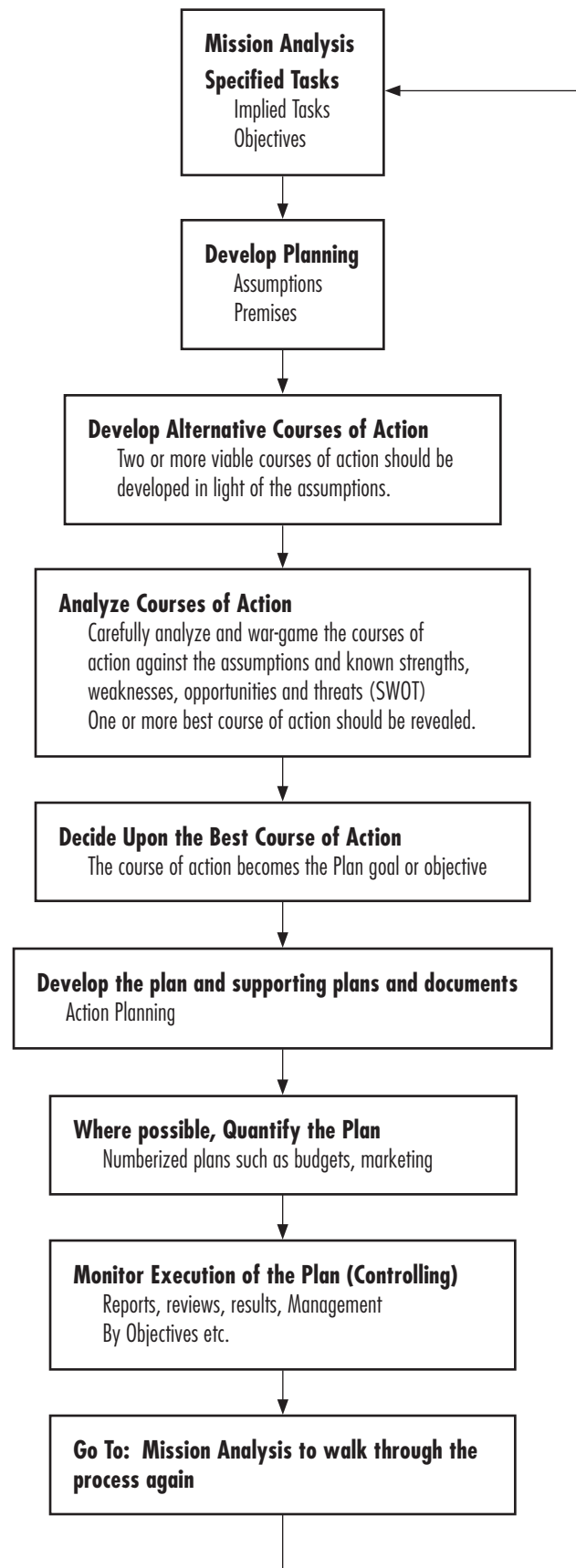


Figure 7-1. Steps in the in the Planning Process (J.M. Turley. Adapted from Koontze, O' Donnell, Weihrich, 1982, and the U.S. Army Field Officers Staff Guide, FM 101-5 and related sources).

roles in the organization. Today Human Resources Management is a large component of this process. Staffing facilitates both current and future organizational objectives. Koonz et al use the term "the principle of staffing objective" which is working to ensure that organizational roles are filled by those qualified personnel who are able and willing to occupy them. The clearer the definition of organizational roles, their human requirements and techniques of manager appraisal and training, the more assurance there will be of managerial quality. This applies to line and staff positions also. Since the time of Koontz and O'Donnell's and other managerial theorists were writing in the 1960s and 70s, issues of equal employment, diversity, values, changing work ethic and the changing workforce—all created a more challenging staffing environment. Hence the Human Resource professional that is now found in most mid to large sized organizations, including local governments. Now, the LPA is assisted and served by human resource professionals in a way that adds value.

Some Staffing Principles:

- Job definition principle. Define results expected as precisely as possible.
- Managerial appraisal. The more precisely the job definition principle is fulfilled; the easier it is to establish a process for measuring results.
- Open competition. Commit to the assurance of quality management which will encourage more open competition among all candidates for management positions.
- Management training and development. Integrate training and development into the management process to enhance effectiveness.
- Training objectives. Establish processes to precisely state training objectives to improve the probability of attainment.
- Continuing development. Commit to managerial competence and require managers to practice continuing self development.

Leading is the next management principle to review. One of the most descriptive single-word definitions of leadership is "influence." While management science deals more with the processes of getting things done, leadership focuses more on the human aspects, including motivation, differing behaviors, and the imperative of closing the gap between the expectations of the organization, leaders, and those of the individual workers or associates.

Some Leadership Principles (Koontz and O'Donnell, et al):

- Integration of goals of claimants. The better goals of workers and managers are integrated and balanced, the more effective the enterprise.
- Harmony of objectives. Harmonize the personal goals with those of the organization.

- Unity of Command. Use a single supervisor approach to avoid conflict and confusion.
- Motivation. Examine and learn from the theories of motivation and integrate those aspects which have value into the reward structure of the organization.
- Leadership. Provide the means for managers to learn and apply leadership principles.
- Communication clarity. Communicate in a way that can be understood by the receiver.
- Communication integrity. Integrity and consistency can enhance acceptance by the receiver of communications.
- Use the informal organization. Communication tends to be more effective when managers use the informal organization to supplement formal communication channels.

The next management function is controlling. Ensuring that plans and action succeed by observing and detecting deviation and providing feedback. Controlling is often the measurement and evaluation of task accomplishment against some standard planning technique such as Gantt charts, the critical path method (CPM) and/or program evaluation review technique (PERT), all of which are excellent tools. Newer theories and writings include Theory z, TQM, Deming quality methods, Peters, Blanchard, Hersey, and others. Total Quality Management and Strategic Planning have become more widely used in both the public and private sector.

Controlling principles emphasize achievement of the objective. Control ensures that plans succeed by detecting deviation and providing the basis for corrective action.

- Future directed controls. Work to base a control system on feed forward rather than just feedback. This provides a means to anticipate problems before they occur.
- Control responsibility. Primary responsibility should rest with the manager charged with the performance of the plans involved.

Effective and efficient plans are:

- Complete
- Clear
- Integrated
- Specific in assigning responsibility

To the end that structure aids control; the easier it will be to correct deviation from the plans. Controls should also be understood by managers.

Some Controlling Guidelines:

- Establish accurate, objective, and suitable standards.
- Pay attention to the factors central to evaluating performance against the master plan.

- Establish procedures which will ensure that controls are focused to identify exception rather than to monitor all activity.
- Controls should be flexible enough to readily adapt to change.
- Take action when deviations occur.

The process of coordination is an activity previously listed as a management function. Koontz, O'Donnell and Weihrich and the later writers do not list coordination as a management function. Yet, management theorists and writers sometimes make the case that coordination be a separate function. It is probably more useful to think of coordination as the "thread" or "essence" of management activity. It is also a human relations practice that has as its main objective enhanced information flow, harmony and the synchronization of efforts. Coordination is effected through personal contact and the use of communications means such as e-mail, telephone and formal letter. Which medium to use depends on the communications situation. The manager and leader need to assess this situation to determine the best means. The point here for modern managers is that e-mail is not always the way to communicate. It is sometimes useful to make personal contact by phone or simply walking about or meeting face to face.

Functions In Road and Street Organizations

Using the road and street organization as a model, it is time to explore what they do. Omnipresent are human resource (personnel) administration, purchasing, financial management, asset management, maintenance management, planning (short and long-range), design, engineering, inspection, subdivision monitoring, right of way acquisition, service support and contract administration-and many more. The list is by no means immutable. The functions performed will vary somewhat between organizations and are affected by the type and scope of the political entity. Management functions remain the responsibility of the LPA regardless of who actually performs the work (own forces or consultant).

Human Resource management embraces managing the road and street personnel situation which is usually a component of the local unit's larger human resource department or office. Of immediate impact to the manager and his line personnel are job descriptions and the appraisal system. Road and street managers must participate in the definition and classification of jobs, because their technical knowledge of the content is critical to developing well documented position descriptions.

The planning function in the road and street department mirrors its general application. At this level, planning for results means ensuring that dollars and resources are available in the right amounts, and when needed, to fulfill and meet requirements. Longer range road and street planning assists the department in fulfilling requirements of existing thoroughfare plans or ensuring that federal funding requirements are met in time to initiate projects which are supported by federal funds.

The asset management and maintenance effort encompasses the management of pavement and bridge maintenance operation and planning. Included is contingency planning, which ensures that unanticipated problems can be dealt with. Use of available computer software can increase the effectiveness of road and street maintenance programs. See Chapter 10, Asset Management.

Design and engineering functions are inherent tasks in the road and street organization. Whether performed in house or by consultants, the engineering task is another responsibility, and it must be performed well and to engineering standards. The inspection function is closely related and it ensures that roads, streets, bridges and structures meet safety and maintenance standards. Inspections provide asset management information for the organization's planning system. Effective training will insure that personnel have the skills required to be effective inspectors.

The review and coordination of subdivision or construction permits is often a joint function of the road and street organization and the local planning department. Comments and evaluations of subdivision proposals and plans ensure that streets and accesses to thoroughfares meet required standards.

Right-of-way acquisition and management is an important function of road and street organizations. The governmental entity's attorney plays a key role in right-of-way acquisition procedures.

The service support function is important to the accomplishment of the road and street mission. Signs, barriers, safety and traffic control equipment are needed to insure the operational integrity and safety of the road or street system. Provision and maintenance of motorized road and street equipment is also required. Service support is routine in the day-to-day operations. Administrative procedures should be established and written to ensure that supplies are on hand, are properly accounted for, and are properly used.

Purchasing and contracting activities include development of specifications, plans, requests for proposals, evaluation of bids and making recommendations concerning the responsiveness and responsibility of the bidders. Administration of road and street contracts, in effect, includes monitoring of compliance with contract provisions, inspection of work performed, approval of requests for payments made by the contractor and activities associated with close-out of a contract. Purchasing is covered in Chapter 4 Funding.

Behavior In the Organization

Two terms apply here: organizational behavior or organizational effectiveness. The terms are nearly synonymous. Managers get things done with and through people. Organizational Behavior is a field of study concerned with the actions (behavior) of people at work. In today's world of work this encompasses human resources (personnel) management as well as contemporary views on motivation, leadership, teamwork, and conflict management. All have been researched by OB theorists.

Road and street departments are also human organizations. Elected officials, staff and line employees all bring with them their abilities and motivation. Their interpersonal skills, perceptions and experiences make up this human component and its culture. Add to that the organization itself, including its mission, characteristics, history, and something called organizational culture results. The organization then takes on a life of its own and this culture can be dynamic, lethargic, innovative, destructive, or bureaucratic.

Skill sets are important at all levels of the organization. The skills required for a level of management vary depending upon the level at which managers are working. There are at least three areas of skills necessary to do the management and supervisory job: technical, human, and conceptual.

- **Technical:** The ability to use knowledge, methods, techniques and equipment for the performance of specific tasks. These skills are acquired through experience, training and education.
- **Human:** Ability to work with and through people. This skill requires an understanding of motivation and leadership principles, and the ability to apply this knowledge.
- **Conceptual:** Ability to understand organizational complexities and how the individual job or organizational entity fits in with and contributes to the whole. This knowledge expands the ability to contribute to the overall objectives of the organization.

Beginning supervisors and leaders use technical skills in greater proportion to conceptual skills. As these supervisors move up the organizational hierarchy, this mix of skills changes, with a greater proportion of conceptual skills being required and used. Understanding the model provides some insights into managing, training and coaching new supervisors who were formerly line workers. They are suddenly faced with a change in the mix of skills required to do the job.

Figure 7-2 graphically demonstrates relationship and readily points to the common denominator critical at all levels: human skill. (*Management of Organizational Behavior*, 158-159)

Organizational behavior training and information is available at professionally designed workshops, and university training sessions in human relations are available in various areas of the state. The Purdue Road School often schedules workshops designed to provide information about the human side of road and street management and supervision. Purdue's Department of Organizational Leadership and Supervision (OLS) offers an array of courses in supervisory management at both the West Lafayette campus and at regional campuses and other designated locations within the state. The Department of OLS should be contacted for detailed information and course offerings. Call 765-494-5599 or visit the OLS web site at <http://www.tech.purdue.edu/ols/>.

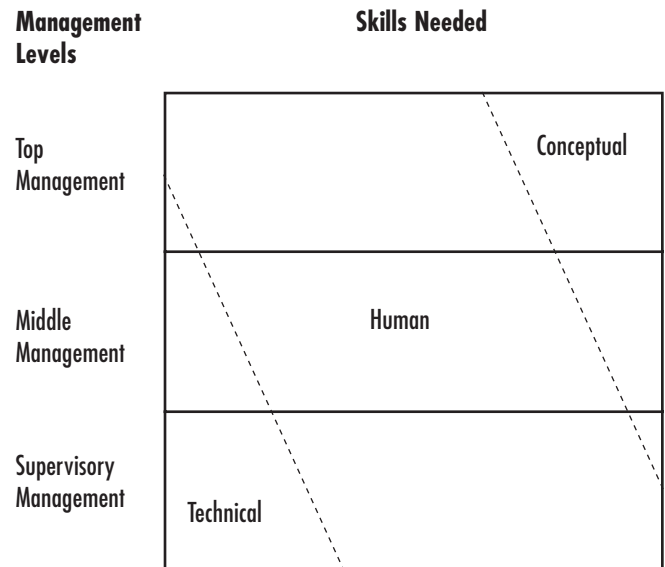


Figure 7-2. Relative level of management skill necessary at different levels of the organization. Based on a model in general use and on the discussion of this relationship in *Management of Organizational Behavior*, 1969, p. 7

More About Leadership and Leadership Style

The word most often seen in definitions of the word Leadership is the word 'influence.' The words could be almost synonymous. Some points:

- Leadership is required and occurs at all levels of the organization.
- Leadership positions may be formal or informal: from legally constituted positional leadership to referent and emerging leaders in organizations.
- Leadership Style: Over the years the goal has been to determine what motivates people and how to use that information in making more effective leaders.

Two basic styles: Task and Relationship oriented styles. Discussion has evolved to these two with variations along the way. Diagnosis of the leader, the associates and the situation is needed in order to successfully understand and use these leadership theories.

Are leaders made or are they born? This long term debate goes on. In most cases, leaders are people like you and me who have been selected to lead, either by management or through the leader's development process which is often informal in the lower echelons of the organization where leaders sometimes move into middle and higher management.

The leadership and leader definitions in most of the literature have a common idea: influence. The word "influence" means the power to produce an effect on persons by tangible or intangible means (Random House Dictionary). For example, two definitions in one source (Robbins and Coulter 1-23) follow:

"The ability to influence a group toward the achievement of goals." And, "an influence- process in which individuals by their actions facilitate the movement of a group toward a common or shared goal."

Leadership variables interact in any leadership environment. Two of these are the leadership situation itself and the personality of the leader. One important division of organizational behavior research is in leadership studies. Over the years the discussion of leadership style has evolved from the great man theory through trait theory to the study of the leader and situational variables. Some of the argument in the 1970s addressed the issue of leader personality. Could you estimate or determine leader style and how could you use the information leader development? Among other creditable studies and theories, two are discussed here. This information is brief, so readers are encouraged to find out more by going to the references for these two theories.

Two basic leadership styles have emerged from the research development discussion over the years: Task and Relationship. Task oriented leaders tend to be more focused on accomplishing the task at hand while relationship oriented leaders tend to focus more on relationship, involvement and motivation.. Most researchers have been reluctant to come right out and identify a preferred leadership style. Instead, they have attempted to analyze leader behavior, the varying complexity and urgency of the tasks at hand and the situation in which the leader finds him or her. The interaction of these variables will result in differing degrees of leader effectiveness.

There is no one best leadership style; but, some leaders are more effective in some situations than others. Not all leaders use one style exclusively. Some leaders are both task and relationship oriented and their behavior may vary depending upon the job maturity or readiness of their followers or associates. Other variables in a leadership situation result from the nature of the job itself. Some tasks are well defined and clear while others are murky and uncertain. The task environment can also vary from tense, fast moving, high risk, to relaxed, everything's ok, no big problems or fast burning fires to extinguish. .

Two leadership theories appear to have lasting utility and can be useful to the local road manager and line supervisors. The two theories we will discuss here both use situational issues to develop models with some key differences. The author of this section has used both in the classroom and in real life and believes they have much to say, even several years after their development and popularization. The first is Paul Hersey's and Ken Blanchard's Model, originally referred to as the Life Cycle Theory of Leadership, and now referred to as the Situational Leadership model; and the Contingency Model developed by Fred Fiedler. Both researchers worked in the 1970's through the present day. Both approaches to the study of leadership continue to be used and taught and appear in many management and leadership textbooks. Hersey and Blanchard's development of Situational Leadership theory was publicized in the One Minute

Manager series and in programs and seminars throughout the country. Fiedler's Contingency Model has some important things to say and it may even be best to use both of these.

Situational Leadership Theory Defined: According to Hersey, Blanchard and Johnson in their book *Management of Organizational Behavior*, leaders who have diagnosed both their own leadership style and the task maturity or readiness of their subordinates, can change their style to more closely fit the readiness of the follower to accomplish the task. The readiness of the follower to accomplish the task ranges from high to low. The four leadership style quadrants reflect varying degrees of high task, high relationship behavior to low task, low relationship behavior. (Hersey, Blanchard and Johnson 174 and 182) This model is also the basis for the series of One Minute Manager books that were popular in the late 1980s and still available today. They are a quick and easy way to learn about this theory.

The Contingency Model has some differences. Fred Fiedler's Contingency Model of Leadership was developed in response to the U. S. Army's need to determine the most effective way to evaluate and select potential leaders for commissioned service. The question was to determine what type of leader was most likely to succeed in military situations and how to measure the potential for leadership. Fiedler's theory goes beyond its military application because it can provide valuable information to leaders in assessing their own situation and in leading others. The significant difference between the leadership model of Hersey et al and Fiedler is in their assessment of the ability of the individual to change leadership style. The situational model posits that the leader can and should change his or her leader style to fit the job maturity or readiness of the subordinate or associate. Fiedler believes that leadership style is difficult to change and that the leaders should understand his or her underlying style and the situation in which the task must be performed. If the leader is aware of the situation, style and the interaction of the two, the only thing that can be done is to engineer the job to fit the leader's style. Fiedler developed an instrument he called the Least Preferred Co-Worker or LPC scale from which the leader could determine the strongest influence: task, relationship or a combination of both. He then developed a matrix the leader could use in assessing this interaction. From personal experience, this author can attest to the utility of the model, but the tendency to ignore what it teaches. Fiedler's writings and the assessment instrument are useful if fully understood. This is further developed in many management text books and in Fiedler's own writings.

Both the Situational Leadership Model and The Contingency Model can be used to gain a wider understanding of leadership style. The works of Fred Fiedler and Hersey and Blanchard, and others are documented in the Bibliography for further reference and reading.

Developing the Local Road and Street Organization

The organizing function is particularly important to the road and street organization. It is made even more important by the environment of scarce resources. Thus, sound organizational practice:

- Prevents duplication of work
- Eliminates internal confusion
- Facilitates interdepartmental communication
- Clarifies understanding of responsibilities
- Establishes the basis for structural change
- Delineates divisional work and formal relationships
- Serves as the basis for explaining public works operations to the public
- Provides flexibility to foster innovation

All of these points enhance the communications between the highway, road or street management organization and the governmental unit executive. In short, the organizational concept and the resulting structure is an efficient means of ensuring practical and stable management. (NACE, 1992 Action Guide, Vol. I-1, 2-1).

Drucker states that the right structure is a prerequisite for performance. Designing the building blocks, he says, is the "engineering phase" of structuring the organization. Determining the objectives (missions) and the inherent functions are critical to any work on organizational structure. (*Management*, p. 523) Key points are these:

- The size, scope and complexity of the organizational structure depends upon the mission and the available financial and physical resources. Local political and geographical considerations are variables which must also be added to this brew.
- Organizational problems requiring solution include job definition and description, qualifications, compensation and combinations and enlargement of jobs and definition of the organizational structure.
- Span of control theory and the analysis of various organizational structures will provide a clearer view of the structure that fits. What functions are going to be performed? How will jobs be defined? What jobs must be combined? How many departments are needed and how many are possible? How many positions or people can a single person manage? For instance, a county engineer might be required to consolidate the engineering and highway departments because of personnel and skills issues.
- The resulting organizational structure will be either flat (many departments /functions under the supervision of a single manager), or tall (few departments or functions for which a single staff officer is responsible). The highway or traffic engineer will be responsible for many functions, so a flat structure will often be the result.

- A nicely structured organization may look attractive, but if it is to be effective, it reflects the actual functioning of the organization. Informal communication processes have both positive and negative impacts on organizational performance. The grapevine, peer relationships and other cross-communication processes can be valuable and should be evaluated from time to time to determine whether or not further structural change might improve overall performance, efficiency and effectiveness.

Managerial authority is another factor to consider. Some areas to consider:

Managers of county or municipal highway, or street departments can organize more effectively if some concepts are kept in mind. (NACE, 1992)

Lines of authority can be more clearly drawn in larger organizations, but ensuring that authority relationships are known and depicted will improve coordination and eliminate confusion. Authority to accomplish a task can be delegated, but the overall responsibility for accomplishment remains with management (highway engineer or traffic engineer) or, ultimately, the elected executive of the governmental unit.

When examining the delegation of authority, the manager should consider the job maturity of the individual and that person's past performance and experience. The subordinate should be given a complete understanding (written, if possible) of the tasks to be performed, condition under which these tasks are to be performed, and the standards by which successful task accomplishment is to be measured.

Necessary authority must accompany the assignment of responsibility. A method of establishing authority-responsibility relationships is through the analysis of tasks to be accomplished, and the development of written job descriptions. Job descriptions are helpful in determining the person who should be hired and assigned.

Ideally a job description should exist for each organizational position. Both the manager and the line employer or staff member have an investment in the job description. Hence, both should be involved in the periodic reviews and updating of the job descriptions. Some knowledge of the technical requirements of jobs is needed. Sometimes several members of the organization can add their expertise to the development of job descriptions. Also, use the expertise and knowledge of the incumbent filling the position. That person has day to day knowledge of the job and how actual practice compares with the existing written job description.

The following is an example of a job description.

Title: Vehicle Maintenance Supervisor

Description. Supervises the operation and administration of the highway department vehicle maintenance facility. Plans and assigns vehicle maintenance tasks. Establishes a schedule for maintenance services and plans and orders a prescribed load of vehicle repair parts based upon historical usage data. Develops budgets and organizes the vehicle maintenance facility. Screens applicants for maintenance positions

and makes hiring recommendations to the county highway engineer. Supervises and evaluates motor vehicle maintenance personnel.

In Indiana, the duties and responsibilities of officials are set forth in the Indiana Code. Two of these important statutes are discussed here.

The first is **IC 8-17-5, County Highway Engineers**. Article 17 provides the statutory responsibilities of the Boards of Commissioners and Section 5 establishes the County Highway Engineer's responsibilities. Qualifications and licensing standards as well as conditions for state support are established in this statute.

The second statute which provides job description information is **IC 36-9-7, City Department of Traffic Engineering**. This statute describes the qualifications, powers, authority and duties of the traffic engineer and briefly describes the composition of a city department of traffic engineering.

Training and Training Management

Well-designed and implemented training programs ensure a high level of professionalism and efficiency throughout the road and street organization. The overall professional development of personnel is enhanced. The benefits include improved efficiency, attention to detail, professional execution and enhancement of safety which reduces liability exposure. Other human intangibles include improved morale and Esprit de Corps.

The County Highway Engineer or the Municipal Street Superintendent provides the impetus and leadership in designing effective training programs. Inherent are the tasks of evaluating the training needs of the organization and designing and implementing programs which will bridge the gaps identified during training needs analysis.

The training needs analysis is the first step in designing a training program. Simply put, this step analyzes the state of training in the organization and is needed before a truly meaningful training program can be implemented. In their Action Guides, the National Association of County Engineers developed questions which require answers while developing a training program. These questions are also applicable to municipal organizations.

- What are the training needs of the department?
- What is to be accomplished?
- Which employees are to be trained?
- What will be the nature of the curriculum?
- Where will the training take place?
- What training resources are required?
- Who will provide the instruction?
- What external resources are required for success?

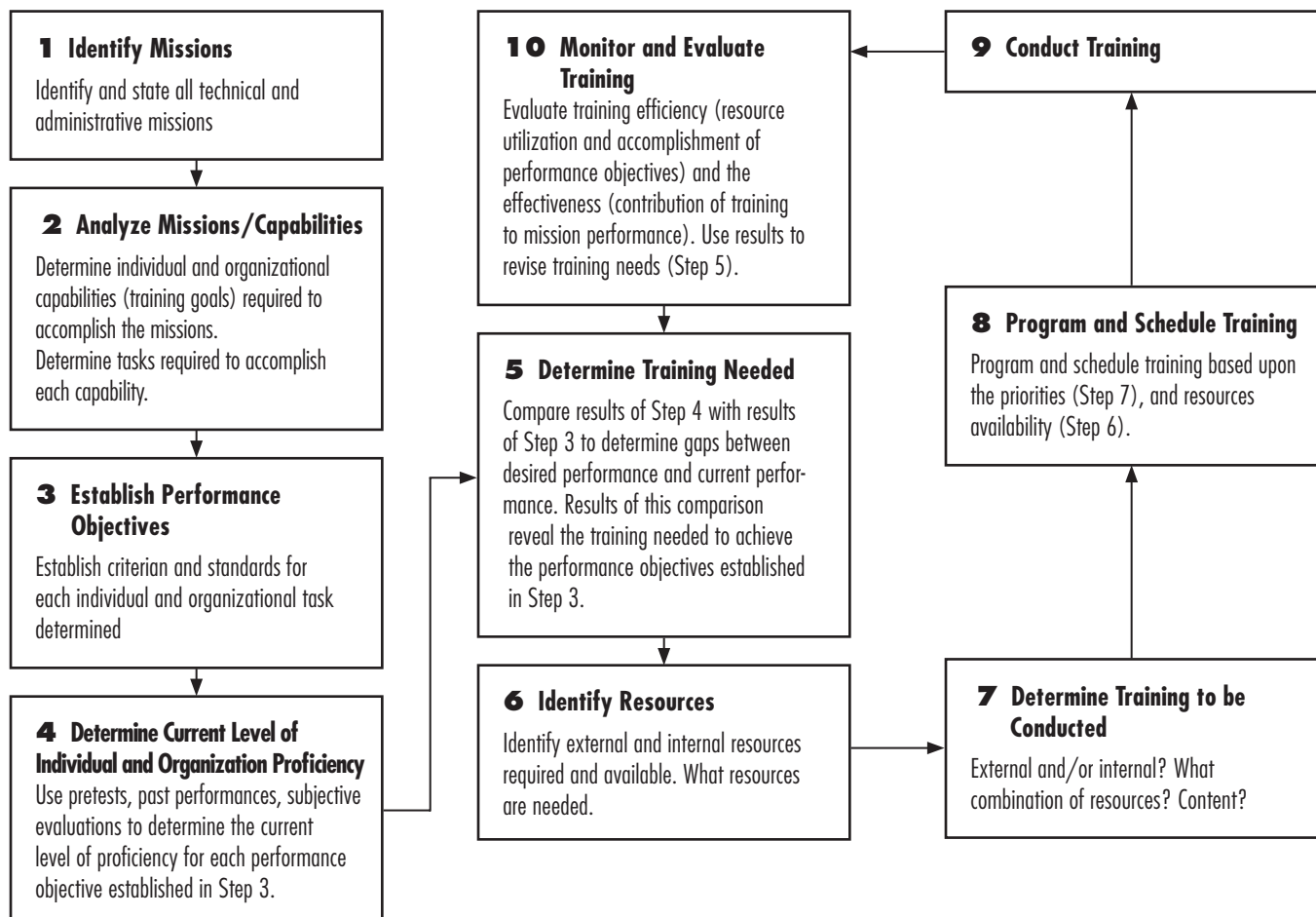


Figure 7-3. Development of a Training Program (U.S. Army, 1970s.)

Initially, the answers to these questions constitute essential elements of information which will provide the basis for the training program. Figure 7-3 provides a schematic of the process of developing a training program.

Local road and street officials have a number of training opportunities. These are the Purdue Road School and the IN-LTAP Road Scholar Program.

The Purdue Road School was established in 1914 by the Indiana General Assembly to provide a forum for the presentation of new developments and improved practices relating to Indiana's highways, roads and streets. Road School provides a venue for discussion, training, education, information exchange and enhances coordination between state, county and municipalities. The transportation industry often participates in Road School. It is an effective technology transfer activity.

The county surveyor and county engineer of each county and any other person authorized by the county executive, as well as the civil and traffic engineer of each municipality and any other person authorized by the municipal executive may attend the annual road school at Purdue University. Expenses for attending road school, including mileage, lodging and tuition, shall be paid from the county general fund for county officials, while the municipal legislative body may appropriate funds annually to pay these expenses for municipal officials (IC 36-9-8-2 and IC 36-9-8-3).

A new program is the Indiana LTAP Road Scholar Program. In 2003, the Indiana Local Technical Assistance Program (Indiana LTAP) initiated the Indiana LTAP Road Scholar Program. This program is a professional development tool for transportation officials, managers, supervisors and upwardly mobile employees committed to providing the highest quality of service to constituents. This professional development is achieved in part by attending training events programmed and offered by Indiana LTAP and other local government and professional associations. IN-LTAP devised a program to track these accomplishments and to recognize individual effort. IN-LTAP's goal is that the Road Scholar program will become a standard and serve as a statement of quality to peers, elected officials, and the public. Figure 7.4 outlines the Road Scholar Program.

Questions and Answers About Management

Q: Why study management?

Answer: One of the most pressing reasons is the need to improve the way organizations are managed and led. Effective organizations are especially important in the public sector where tax dollars for services are provided by local public agencies. Good stewardship demands that the organization be as efficient and effective as possible while maintaining a 'customer first' orientation. The study of management also includes human behavior and leadership which, if applied diligently, can contribute to organizational effectiveness. Well managed organizations foster loyal constituencies and do well.

1. **Body of Knowledge** (Core Courses)

Must attend all 10 Core Courses

Supervision and Highway Organization

Liability and Risk Management

Highway Funding

Purchasing and Public Construction

Roadway Safety

Basics of a Good Road

Temporary Traffic Control

MUTCD

Bridge Basics

Drainage

Road and Bridge Plan Reading

Estimating Construction Cost and Quantities

No credit hours will be awarded for core courses. These are mandatory to achieve the level of Master Road Builder. *(Core courses will be offered in pairs, to provide an opportunity to complete two courses in a single day of training, on at least 3 occasions during each year.)*

2. All other LTAP training events will be considered electives and will be given credit according to the number of hours of training provided *(half day workshops will typically be worth 3 hours, full days' typically worth 6 hours)*. To receive credit for attendance you must attend the entire course. You must check in at registration and receive the certificate presented at the end of the course.
3. Multiple day events will have event total credits. *(I.E. County Bridge Conference Day 1 = 6 Credit Hours and Day 2 = 6 Credit Hours; Event Total = 12 Credit Hours.)*
4. The value of actual "on the job" work experience is recognized and will be given credit at the rate of 30 hours for each year of experience. This is similar to the work experience requirement for registration as a Professional Engineer.
5. Credit may also be given for attendance at LTAP events over the past 5 years. The applicant will be required to complete a form to receive this credit. By signature of this form, the applicant will be certifying the information to be true and correct. *(Any information found to be false or misleading would be grounds for the applicant to be dropped from the program permanently.)*
6. **Levels of achievement.**
 300 Hours = Apprentice Road Builder
 600 Hour = Master Road Builder

Figure 7-4. Indiana LTAP Road Scholar Program

Q: What do managers do?

Answer: Not an easy task since organizations differ in size and complexity and in job content. Over one hundred years of study and research have produced a body of knowledge about managers, leaders, and followers and the organizations within which they operate. A good way to look at this is in terms of functions, skills, processes, roles, processes, and change. This chapter has only skimmed the surface of this exciting subject, so plan to read and study more to gain a real understanding.

Q: What are management functions?

Answer: Over the years the functional approach has been used to study management and to help answer the 'what do managers do' question. The current literature lists four functions. These are planning, organizing, leading and controlling. Most management textbooks extant seem to be organized around these functions.

Q: Are management skills applicable in both the private and public sector?

Answer: Yes.

Q: What skills should the manager possess and hone?

Answer: Generally, managers must possess these skills: Technical, human and conceptual. The degree to which a manager will use these skills will vary depending on the organizational level in which they find themselves. For example, first line managers will use a higher proportion of technical skills than will middle or higher management.

Q: Where can I get additional information about management training and education.

Answer: Training is available from a number of sources. This chapter mentions several: the Purdue Road School, the state-wide training opportunities provided by the Indiana Local Technical Assistance Program (IN-LTAP) at Purdue, and college and professional association education and training opportunities. IN-LTAP maintains a resource library of technical and management information applicable to LPA road and street work and management. IN-LTAP's Road Scholar program was detailed at the end of the chapter (see above). Local and state government associations also make training available. Examples are the Indiana Association of Counties, the Indiana Association of Cities and Towns and so on. Purdue's State-wide technology program, especially the Department of Organizational Leadership and Supervision provide opportunities. Local Road and Street officials can also avail themselves of opportunities and resources available from the American Public Works Association (APWA). IN-LTAP has hosted APWA internet based training provided by APWA through its Click Listen and Learn training series.

Q: Is management leadership and vice versa?

Answer: Management is a process by which things are done through people. The study of leadership is a dimension of organizational behavior. Leadership definitions adhere to the idea of influence. In fact one definition of leadership is the word 'influence.' Becoming an effective leader requires knowledge of self, the situation, peers, subordinates, and the overall organizational culture. Early writers argued that leaders were born. Researchers and writers have disproved that idea as a given, but the quest to understand leadership goes on to this day. The continued study of the subject is beneficial even to the most seasoned leader.

Q: What are some examples of definitions of Leadership and Leaders?

Answer: Here are a few: Influence; ability to motivate a group to the achievement of goals. Leaders are able to influence others and possess managerial authority. A good definition of what a leader is from author John Erskine: "In its simplest terms, a leader is one who knows where he wants to go and gets up and goes."

Statutes

IC 8-17-5-6

Sec. 6. The county highway engineer shall, subject to the policies of the county executive, perform the following functions:

(1) Prepare and publish a county-wide inventory and classification of the county highway system so that the total county federal aid secondary system is included in the county primary or arterial system of roads.

(2) Prepare and keep a perpetual inventory of all bridges and culverts serving the county highway system. The inventory must show the location, dimensions, condition, and the year of construction for all bridges and major culverts.

(3) Prepare and publish standards of design, construction, and maintenance of the county arterial, feeder, and local roads that make the best and most economical use of local road materials.

(4) Prepare a long-range county-wide program of road and bridge construction and improvements, with the proposed projects arranged in order of priority. The program of proposed projects must cover a period of at least four (4) years.

(5) Investigate requests and petitions for road or bridge improvements that are received either by the county executive or at public hearings, and make recommendations to the county executive.

(6) Prepare surveys, designs, plans, and specifications for all county road and bridge construction projects, prepare contracts, and advertise for bids.

(7) Make construction and materials inspection of all county road and bridge construction projects, inform the executive of the status of construction work, and certify completed construction projects.

(8) Develop a county-wide program of traffic safety that provides for traffic control signs, signals, and speed limits, warning protection at railroad crossings, load limits, and detour routings.

(9) Inspect and approve the construction of subdivision streets that are to be taken into the county highway system, and recommend appropriate action to the executive when roads and streets in subdivisions are being taken into the county highway system.

(10) Prepare engineering estimates and make recommendations to the executive concerning the materials and equipment needed in the annual budgeting of both construction and maintenance funds.

(Formerly: Acts 1963, c.131, s.6.) As amended by P.L.86-1988, SEC.127.

IC 36-9-7

IC 36-9-7-1

Sec. 1. This chapter applies to all cities.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-2

Sec. 2. The city legislative body may, by ordinance, establish a department of traffic engineering.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-3

Sec. 3. (a) The personnel of the department of traffic engineering consists of a city traffic engineer, his assistants, and other employees necessary to perform the duties of the department. The city executive shall appoint the traffic engineer.

(b) The traffic engineer must:

(1) have a thorough knowledge of modern traffic control methods;

(2) be able to supervise and coordinate diversified traffic engineering activities and prepare engineering reports; and

(3) either:

(A) be a registered professional engineer who has practiced traffic engineering for at least one (1) year;

(B) have a certificate of engineer-in-training under IC 25-31 and have practiced traffic engineering for at least two (2) years; or

(C) have practiced traffic engineering for at least ten (10) years.

A person must furnish evidence of his qualifications under this subsection before he may be appointed by the executive.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-4

Sec. 4. (a) The traffic engineer is responsible only to the city executive or safety board, and he may act only in an advisory capacity to the executive or board.

(b) The traffic engineer has full authority over all his subordinates.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-5

Sec. 5. The traffic engineer shall:

(1) conduct all research relating to the engineering aspects of the planning of:

(A) public ways;

(B) lands abutting public ways; and

(C) traffic operation on public ways; for the safe, convenient, and economical transportation of persons and goods;

(2) advise the city executive in the formulation and execution of plans and policies resulting from his research under subdivision (1);

(3) study all accident records, to which he has access at all times, in order to reduce accidents;

(4) direct the use of all traffic signs, traffic signals, and paint markings, except on streets traversed by state highways;

(5) recommend all necessary parking regulations;

(6) recommend the proper control of traffic movement; and

(7) if directed to do so by ordinance, supervise all employees engaged in activities described by subdivisions (3) through (6).

As added by Acts 1981, P.L.309, SEC.80.



Transportation Security and Risk Management

Introduction

Traditional transportation risk management has been changed irrevocably by the terrorist attack of September 11, 2001. That event has thrust a new dimension into the busy and complicated transportation risk management landscape. Natural disasters were already a random risk, as were manmade disasters that resulted in tort liability issues. Now, malicious terrorist acts of war are added to the spectrum of manmade disasters, complicating prevention and mitigation planning, actions and tasks in an unstable and dangerous environment. The immense and open United States transportation infrastructure is indeed the backbone of the economy. In a recent paper on transportation security, The National Defense Transportation Association sets the value of the United States transportation infrastructure at approximately \$1.75 trillion. (NDTA Business Policy Committee, August 2002) This infrastructure enables movement and commerce throughout the system, even in the most remote areas. Analyzing and determining the probability of an attack, disaster, or accident is crucial to developing prevention and mitigation strategies. As with most human challenges, difficult decisions are needed along the way because of the resource constraints which exist at all levels of government. The need for additional vigilance in counter-terrorism and transportation security makes the resource allocation problem even keener. New requirements need additional funds and physical and human resources. The newly established Department of Homeland Security and its state counterparts and collaborators bring both new players and reorganized older ones to the table. The roles and missions of the critical transportation security players are reviewed, along with some preparedness and mitigation ideas applicable to infrastructure and installation security. The internet has placed a plethora of information at our fingertips, and links to information developed while writing

A Frontier symbol of security—a safe haven in time of trouble. We can spend our time in a blockhouse or bunker, but that may not be the best course of action. A proactive approach with security in mind is a potentially successful course of action, especially in achieving the freedom of movement and security of the transportation system and its infrastructure. It meets the challenge head on. (Photo: Fort Ouiatenon Blockhouse, ca 1930's. Tippecanoe County Historical Association)

this chapter are provided, along with direction to additional sources. The chapter concludes with an updated discussion of tort liability and local government road and street officials. Statutes, references and questions and answers are included.

Some Post-9/11 Observations

The following quotes, just a few of many, help illustrate the immediacy and critical nature of the transportation and infrastructure security challenge.

"Homeland security is a new field. Security means a lot of things to different people. By trying to do everything, we may achieve nothing. By rooting our strategy in the voice of the public and selecting the best ideas, we can ground ourselves in progress. It is for the protection of Indiana we serve."

(Indiana's Strategy for Homeland Security, 2002, 6)

"There should be no doubt in anyone's mind that the security of our transportation system is critical to the survival of our nation as we know it. It is not necessary for us to inform the terrorist where our weaknesses are or what the next move being taken to improve security is."

(Dr. Joseph Mattingly in the Defense Transportation Journal, February 2002).

Organization for Homeland Security at the National Level

The 2003 legislation establishing the Department of Homeland Security has been called the most sweeping reorganization of national government since the National Security Act of 1947. This new department is now home to a number of transportation security and disaster agencies and departments which formerly had their home in the Departments of Transportation, Treasury and Agriculture. The department has three primary missions:

- Prevent terrorist attacks within the United States.
- Reduce America's vulnerability to terrorism.
- Minimize the damage from potential attacks and disasters.

The Department of Homeland Security is subdivided into functional directorates organized as follows:

Border and Transportation Security

- U.S. Customs Service*
- Immigration and Naturalization Service*
- Federal Protective Service
- Transportation Security Administration*
- Federal Law Enforcement Training Center
- Animal and Plant Health Inspection Service*
- Office of Domestic Preparedness*

Emergency Preparedness and Response

- Federal Emergency Management Agency*
- Strategic National Stockpile and the Natural Disaster Medical System
- Nuclear Incident Response Team
- Domestic Emergency Support Teams
- National Domestic Preparedness Office

Science and Technology

- Chemical, Biological, Radiological and Nuclear (CBRN) Countermeasures Programs
- Environmental Measurements Laboratory
- National BW Defense Analysis Center
- Plum Island Animal Disease Center

Information Analysis and Infrastructure Protection

- Critical Infrastructure Assurance Office
- Federal Computer Incident Response Center
- National Communications System
- National Infrastructure Protection Center
- Energy Security and Assurance Program

The Secret Service and Coast Guard are assigned to the Department of Homeland Security and report directly to the Secretary.

*Indicates those organizations that will have greater contact with Local Public Agencies (LPAs). For updates see www.dhs.gov which also contains an organizational chart for quick reference. The web site provides links to all of the agencies listed.

Transportation and Infrastructure Security

This is both a deadly challenge and an opportunity. As we have indicated, the nation responded to the attack of September

11, 2001 by taking immediate action to organize for a new kind of war, a war to secure the homeland of the United States of America. Concurrent with the war against terrorism overseas, immediate action was taken to learn from the events of 9/11 and to initiate a reorganization at the national level. At the same time, state and local governments initiated actions to review disaster and counter-terrorism plans and to ensure that risk management, prevention and mitigation strategies were in place. The Association of American State Highway Transportation Officials (AASHTO) was one of the first professional organizations to spring into action with its transportation security initiatives. AASHTO was joined by the National Defense Transportation Association's Business Practices Committee, and transportation security issues became even more prevalent in Transportation Research Board work and products. AASHTO Transportation Security Task Force took the position that consistent methodology and common resources should be employed to assist the state departments of transportation in their transportation security efforts. AASHTO has, over the intervening years, produced guides, surveys and reports which, although directed more toward the state transportation departments, will also be useful to local agencies responsible for public works, road and street work in Indiana. Other agencies and associations have also been busy in this area. The Transportation Research Board has been hard at work developing information and setting research projects to address transportation security across the spectrum. Associations have also been busy, including the National League of Cities, American Public Works Administration (APWA) and others.

Individual states have organized counter-terrorism and homeland security councils or other structures. The 2002 Indiana General Assembly established the Indiana Counter-terrorism and Security Council (C-TASC) whose task is to develop and implement a comprehensive state strategy addressing terrorism in Indiana. The Council serves as Indiana's liaison with the Department of Homeland Security and will work with federal public safety departments and agencies, state and local governments and private entities to: develop strategies; review and coordinate strategy revisions; act as a central information source for terrorist threats and activities; ensure, to the extent permitted by law, that all intelligence and law enforcement information is disseminated; and share the information with the public when security permits. By early 2003, the Council had written and published "A Strategy for Homeland Security."

The Homeland Security Advisory System

After 9/11, the national government established an alert system called the Homeland Security Advisory System that uses color coding to indicate the various threat levels. A graphic illustration and explanation appear on the internet in a number of sites and have been disseminated throughout the country. It is also displayed and updated on the Indiana C-TASC web site. (<http://www.in.gov/ctasc/>) The national Threat Advisory System is directed at the federal departments and agencies. In

Indiana, local public agencies should monitor the system, but look to the state Counter-terrorism and Security Council and local emergency management agencies for guidance and actions.

Levels of The Advisory System

- **Low (Condition Green).** Used when there is a low risk of terrorist attacks. Agencies are to remain vigilant and continue to train and upgrade contingency plans, including risk assessment and physical security upgrades as indicated.
- **Guarded (Condition Blue).** Maintain an increased state of readiness in addition to the routine vigilance of Condition Green. Some examples are reviewing and exercising contingency plans and checking and exercising communications.
- **Elevated (Condition Yellow).** Condition Yellow is declared when there is significant risk of terrorist attack. Federal departments are to increase surveillance of critical facilities, assess the precise nature of the threat and take appropriate prevention and mitigation action and implement contingency and emergency response plans when indicated.
- **High (Condition Orange).** Condition Orange is declared when there is a high risk of terrorist attacks. Federal agencies should consider measures in addition to those taken under Condition Yellow. Included would be added coordination with Federal, State and local law enforcement agencies and additional precautions at public events. A higher level of preparation to execute contingency procedures and restricting threatened facility access are measures that might be taken.
- **Severe (Condition Red).** A severe risk of terrorist attack exists. Protective measures are to be implemented, but the DHS is quick to point out that these measures are not intended to be sustained for extended periods. In addition to the actions taken under other threat levels, primary features of Condition Red are personnel and special teams deployment, monitoring and directing transportation systems and modes, and ultimately, when indicated, closing public and government facilities.

Local and State Agencies

In addition to the C-TASC, a number of state agencies are involved in emergency and counter terrorism planning. All have some impact on transportation and infrastructure. At the forefront is INDOT, its districts and its numerous divisions.

The Cooperative Extension Disaster Education Network.

The Cooperative Extension Service EDEN network is beefed up to provide disaster information and links to agencies. The EDEN website also displays the threat advisory graphic. (<http://www.ces.purdue.edu/eden/>)

The Purdue University Homeland Security Institute.

The institute was established in 2002 for research and engagement and is charged with developing across-the-disciplines homeland security curricula. Studies in a Homeland Security curriculum will be added as a specialization to degrees granted by Purdue.

Local Emergency Management Entities. The statewide emergency management system is ultimately local. By spring of 2003, local emergency management agencies were given additional communications responsibilities that include single point of reception and dissemination of homeland security information to other local first responders, transportation and public works entities.

Health and Environmental Agencies. The State Board of Health, Commissioner of Agriculture and their operational and research arms play a role in health, environmental and biological preparedness. Ensuring secure food and water supplies is a major task.

Emergency Response and Transportation Security.

Planning for emergency response to manmade, natural or terrorist disasters is an ongoing task. Management literature teaches us that planning is the most pervasive management function. (See Chapters 5 and 7.) Disaster and counter-terrorism contingency planning is a critical step in developing a response that will prevent or minimize the effects of any of these disasters. It is also necessary to test these plans thoroughly and in a cost-effective way. Table-top exercises are a way to do this.

Table-Top Exercises

Using table-top exercises to test contingency plans, evaluating planning, process and content, is not new. Military organizations have long employed this technique in "Command Post Exercises" and small unit field training exercises. Businesses and emergency planning agencies have used variants of these war gaming techniques as a key method of testing plans and planning. Agencies require planning for traditional disasters and now, countering terrorism, use table-top exercises to test assumptions, plans and operating procedures. A number of Indiana emergency planning, transportation and public works agencies have used table-top exercises to review and update their planning and execution.

Table-top exercises are used to train personnel as well as to test plans. These exercises use scenarios which include planned messages to create a situation that requires a studied, well-thought-out response. The messages define a specific event which creates a need for action. Examples are power outages, building collapses, blocked streets, and incidents such as demonstrations and traffic tie-ups.

Table-top exercises require planning cells or executing agencies to respond to a series of messages describing events, in a way that will mitigate or prevent succeeding events or actions. The exercise is often initiated by an alert or call that also tests the telephone, computer and broadcast alert system. Participants most often are required to assemble in a pre-designated

location such as the city's emergency operations center, a county emergency management operations center or similar location. A control team manages the exercise and after it is concluded, participants help to identify lessons learned and follow-up actions. The Indianapolis Department of Public Works has been using table-top exercises to test and evaluate emergency and disaster plans. Their model is designed to take no more than half a day, which ensures that public officials are available at least once during the day. (See Purdue Road School Proceedings, 2005.)

Local road and street officials should contact their emergency management and/or public works agencies for assistance in both the contingency planning and testing processes. An internet search will yield an abundance of information about table top-exercises.

Local Government Infrastructure and Installations

Physical security of local government operations and public works facilities is also an increasing concern. At the local level limited financial and human resources make it nearly impossible to ensure 100 percent security, but access control, surveillance and developing physical security procedures and check lists are inexpensive ways to strengthen security of buildings, motor pools, bridges, roads, storage areas and water and waste-processing facilities. The following list is derived from both the author's experience and a check list developed by Farmland Industries appearing in *Farm Cooperatives*. (Rural Cooperatives, May/June 2002. <http://www.rurdev.usda.gov/rbs/pub/may02/hatches.html>)

- Know your clients, customers, vendors and other regular visitors to the site.
- Escort visitors while on the premises.
- Pay close attention to material inventories and consumption.
- Conduct a full security review of facilities.
- Construct suitable barriers around the installation. Fencing, and segregated areas are suggested.
- Park vehicles and equipment where they can easily be seen by law enforcement during regular patrols.
- Use steel doors with deadbolt locks and bar windows where appropriate.
- Use high-security chains and padlocks.
- Lock storage areas and buildings as appropriate.
- Impede vehicle entry by using gates or bollards and chain/cable with padlocks.
- Be sure security and emergency plans and procedures comply with local, state and federal requirements.
- Establish a physical security operating standard that includes procedures, checklists and emergency contacts.

- Be sure all personnel are trained and that new personnel receive a physical security briefing.
- Conduct quarterly drills and training exercises.
- Post "Private Property - No Trespassing" signs along fence lines/boundaries.
- Keep an up-to-date list of all emergency contacts.
- Maintain effective information technology security, password protection and firewalls.
- Use sensors when available.
- Report all suspicious activities, vehicles or persons in the area.
- Report all threats to personnel and facilities.
- Report all thefts, inventory shortages and missing materials.
- Keep seals and labels secured.
- Don't allow loaded, unattended, unsecured trailers or other vehicles to be present.
- Create opening and closing security checklists for employees.
- Maintain close liaisons with local law enforcement and emergency responders.
- Ask for extra law enforcement patrols and give them tours of your property.
- Establish a process for including neighbors and the community as part of the property security and emergency procedures. Human intelligence can be an ally.

Some Conclusions

Effectively securing a transportation system characterized by multi-dimensional porosity is a major challenge. How do we secure the system without totally throttling its function and viability? How much risk is bearable and how much risk is intolerable? Achieving 100 percent freedom from risk is nearly impossible, so we must rely on analysts who have the mathematical tools we can use to respond to these questions about risk.

Disaster counter-terrorism plans need to be practical, relevant and workable. Using the expertise and advice of emergency management agencies such as FEMA and C-TASC are important to achieve consistency and preserve situational flexibility.

Tort Liability and Local Roads and Streets

Managing and administering the local road and street effort creates numerous opportunities for lawsuits against local governments. For many decades there was a strong tradition of immunity from tort liability for local and state governments. This tradition waned in the changing climate of the 1960s and 1970s, and the resulting tort liability environment has created

a difficult atmosphere for local officials. In 1974 the Indiana General Assembly passed the Tort Claims Act which delineated the provisions under which governments would not be liable. Subsequently, a major revision rescinded the 1974 statute and was codified as **IC 34-13-3**, Tort Claims Against Government Entities and Public Employees. The new statute also outlines the conditions under which a governmental entity is not liable for loss. Under certain circumstances, liability may result even in these instances. Those statutory exceptions that seem to apply most to the subject of streets and roads are listed here. The entire text is included in the statute section of this chapter. (**IC 34-13-3**)

- Loss resulting from the natural condition of unimproved property.
- Loss resulting from the temporary condition of a thoroughfare which results from the weather.
- Loss resulting from the condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- Loss resulting from the initiation of a judicial or administrative proceeding.
- The adoption and enforcement of or the failure to adopt or enforce a law, rule or regulation, unless the act of enforcement results in false arrest or imprisonment.
- Loss resulting from the act or omission of someone other than the governmental entity employee.
- Loss resulting from the failure to make an inspection or the making of an inadequate or negligent inspection of any property other than the property of the governmental entity.
- Loss resulting from the entry upon any property where entry is expressly or implicitly authorized by law.
- Loss resulting from the theft by another person of money in the employee's official custody, unless the loss was incurred because of the employee's own negligence or wrongful act or omission.
- Loss resulting from the design of a highway, if the claimed loss occurs at least twenty years after the public highway was designed or substantially redesigned. Some exceptions are outlined in the statute.

The high costs of insurance and the difficulty in finding an underwriter have forced local governments to explore aggressively ways of reducing liability. Because of the current crisis, state law authorizes purchasing insurance to cover the liability of the local government entity and its officers and employees (**IC 34-16.5-18**). The 1986 legislature created an insurance pool to assist local governments. A significant part of the solution to this dilemma seems to be a more professional approach to managing and administering streets and roads and developing actions which can reduce the incidence of exposure to tort claims. Some of these answers can be found in the following check list excerpted from an article published

in *Technology Transfer* (University of Connecticut Transportation Institute), Volume 2, No. 1, Winter, 1984, and reprinted in *Tech Transfer*, #5, May 1984.

Fourteen Practical Tips for Reducing Agency Tort Liability

1. There should be a clear definition and understanding of the duties, responsibilities, and authority of the agency, its sub-units, and each individual in the organization.
2. Officials and employees should clearly understand and subsequently perform their general duties in a satisfactory manner.
3. Decisions concerning professional plans or programs, such as the physical and geometric design of traffic facilities and the application of traffic control devices and regulations, should either be made by competent professionals or be based on the advice of such persons.
4. Public highway agencies should establish and maintain adequate record systems to provide current facts about existing conditions. These systems include:
 - Traffic accident records and procedures for identifying high-accident locations, and
 - Inventory procedures which provide reasonably current information about the physical features and conditions of existing transportation facilities (i.e. photo logging and conditions ratings) and traffic control devices (location, model and/or type and size, date installed or repaired, condition, function, reliability, and operational criteria).
5. A system of regular inspections should be established and maintained on a continuing basis. These inspections should cover the physical conditions of facilities and traffic control devices. Traffic signals should be checked at a maximum of six-month intervals. Traffic signs should be inspected at least twice annually under both day and night conditions, especially in inclement weather. Traffic markings should be checked as needed, but special attention should be paid in the late winter and early spring. Temporary traffic control devices (such as those placed in construction or maintenance areas) should be checked on a daily basis, including workdays, weekends and holidays. More frequent inspections should be made in major work areas. A chain of command should be established for the inspection process so that changing conditions can be anticipated, present and potential defects can be reported, and prompt action can be taken on those reports. An extremely helpful type of inspection is periodic trips made by the traffic engineer and his or her traffic enforcement counterpart. Another source of inspection capability is developing a sense of awareness and responsibility on the part of all agency employees, including non-technical staff, so they will be constantly on the lookout for vandalized or malfunctioning traffic control devices and other hazardous conditions.

6. An established procedure for handling complaints and reports should be developed and maintained with one person or one office designated to receive and record all such reports and take appropriate action. Handling complaints effectively has legal as well as public relations benefits.
7. Complete and current maintenance records can provide information about type and character of repair or replacement activity, including trouble found, repairs made, and materials used.
8. All designs of facilities or traffic control devices should be in accordance with current policies, guidelines, standards, and manual specifications. Geometric designs should be predicated on criteria that exceed minimum standards. Field conditions should be correlated with traffic controls (i.e. a 55 mph speed limit on a road with a maximum 35 mph stopping sight distance is unsafe and irresponsible).
9. Performance standards should be adopted for design, construction, operations and maintenance.
10. Rational procedures to determine improvement priorities and programming should be established and followed. Normally this will include evaluating the cost-effectiveness of various alternatives.
11. Design and operational reviews should take place both before and after making any facility or traffic control change. Both the basic design and traffic control elements should be checked in the field. Reviewers should be alert for changing conditions such as increased traffic movements, changes in vehicle type, etc. Active and completed projects should be inspected.
12. All agency employees should be educated in the importance of using reasonable care in fulfilling their individual duties and in the overall group mission.
13. Beware of false economy. Cutting necessary expenditures in order to appear fiscally responsible to the taxpayer inevitably leads to careless and negligent work.
14. Provide liability insurance against claims.

Local Government Actions Following An Accident

In a presentation to the Purdue Road School in 1986, former Indiana Attorney General Linley Pearson suggested a number of actions local government officials can take to minimize damages resulting from an incident or accident.

- Establish a record-keeping system that insures important information is kept regarding any incident that might result in a claim or a lawsuit.
- Prompt investigation is important to determine condition of the road, signs, and signals as they were at the time of occurrence.
- A camera is a small expense compared to a potential damage award.
- All critical documents, including photographs, should be labeled and certified as to date, time and place the documents were created.
- All documentation should be carefully safeguarded and placed in an accident /incident file which is established immediately after an accident /incident is reported. Witness statements are crucial. Remember that police and fire personnel at the scene are interested first in saving lives, and second in clearing the roadway, and they may not take time for extensive statements or make photographs needed for later litigation. The local government's independent investigation system must be sure that all important witnesses are interviewed and their evidence documented.
- A complete list of the witnesses and their addresses is important to ensure the usability of the accident / incident file in future litigation.

In summary, the reality of the liability climate requires local governments to take aggressive action to protect the agency against the effects of claims and tort liability suits.

Questions and Answers About Transportation Security and Risk Management

Q: How is the State organized to assist Local Public Agencies with Homeland Security and Transportation Security issues?

Answer: In addition to the emergency management infrastructure already in place, the 2002 General Assembly established the Counter Terrorism and Security Council to develop and implement a comprehensive state strategy to deal with the terrorism threat. By 2003 the plan, "A Strategy for Homeland Security" had been written and implemented. The CTASC web site is maintained and updated in a timely manner and is an excellent resource for local officials and Indiana citizens. The site is currently located at: <http://www.in.gov/ctasc/>

Q: What other agencies are involved in homeland security and transportation security planning and assistance?

Answer: In sum these agencies or activities are: The Cooperative Extension Disaster Education Network (EDEN); Local Emergency Management Agencies reporting through the State of Indiana Emergency Planning infrastructure; Health and Environmental Agencies to include the Indiana State Department of Health, county health departments, environmental agencies, and local first responders such as fire, police and special response agencies. The Purdue University Homeland Security Institute provides some additional research and academic muscle to the effort. Not to be left out are the Indiana Army and Air National Guard at the disposal of the Governor. More detailed discussion of some of these entities is found in this chapter.

Q: What are the procedures for handling a tort claim against a municipality or other governmental Entities?

Answer: IC 34-13-3-8 contains the procedures and guidance for handling tort claims against government entities. All tort claims must be filed within 180 days after the loss occurs. An exception is minors or incompetents. The entity must settle the matter within 90 days of filing the claim or the injured party will then have the right to file a lawsuit in any court of the state which has jurisdiction to hear such suits.

Q: Why should local street and road officials and employees be concerned about tort liability?

Answer: Recent changes in judicial decisions have resulted in the doctrine of governmental immunity being abrogated and courts assessing damages without regard to policy limits of any insurance carried by the county. In recent years the number of liability suits against governments has increased and the result has been the rapid expansion of associated costs. Government tort liability is here to stay and local governments and their employees must adapt to this environment. As a result, local governments must pay close attention to the subject of tort liability to ensure that all that can be done to reduce exposure and costs is, in fact, done. Implementing risk management plans and "preventative engineering" is necessary to ensure survival and maintenance of faculty in this environment.

Q: What actions can be taken to reduce tort liability arising from the administration and maintenance of roads and streets at the local level?

Answer: The governmental unit should take immediate action to ensure that the administration and management of street and road work is accomplished in the most professional manner possible. Personnel need a clear understanding of their duties, responsibilities and authority. Plans, programs and application of traffic control should be accomplished by competent professionals, or based upon the advice of such persons. Adequate records must be maintained. Regular inspections should be accomplished, documented, and backed up by random checks. Procedures for handling complaints and reports will also aid in ensuring that problems are identified and that action is taken quickly to correct deficiencies. Standards of performance should be formulated and adopted in areas of planning, design, construction, operation, maintenance and management. Careful planning will ensure that necessary work is accomplished expeditiously. Employees must be aware of the need for reasonable care in performing their duties.

Q: Under what conditions is a governmental entity not liable for loss?

Answer: IC 34-13 governs tort claims against government entities which include counties, cities and towns. The statute provides for certain exemptions for persons and governmental entities.

Chapter 8 Statutes

IC 4-3-20

Chapter 20. Counter-terrorism and Security Council

IC 4-3-20-1

"Council" defined

Sec. 1. As used in this chapter, "council" refers to the counter-terrorism and security council established by section 2 of this chapter.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-2

Council established

Sec. 2. The counter-terrorism and security council is established.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-3

Council membership

Sec. 3. (a) The council consists of the following members:

- (1) The Lieutenant Governor.
- (2) The Superintendent of the State Police Department.
- (3) The Adjutant General.
- (4) The Director of the State Emergency Management Agency.
- (5) The State Fire Marshal.
- (6) The State Health Commissioner.
- (7) The Commissioner of the Department of Environmental Management.
- (8) The Assistant Commissioner of Agriculture.
- (9) The Chairman of the Indiana Utility Regulatory Commission.
- (10) The Commissioner of the Indiana Department of Transportation.
- (11) The Executive Director of the Indiana Criminal Justice Institute.
- (12) A local law enforcement officer or a member of the law enforcement training academy appointed by the Governor.
- (13) The Speaker of the House of Representatives.
- (14) The President Pro Tempore of the Senate.
- (15) The Chief Justice of the Supreme Court.

(b) The members of the council under subsection (a)(13), (a)(14), and (a)(15) are non-voting members.

(c) Representatives of the United States Department of Justice may serve as members of the council as the

council and the Department of Justice may determine. Any representatives of the Department of Justice serve as non-voting members of the council.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-4

Council Chair

Sec. 4. The Lieutenant Governor shall serve as the chair of the council and in this capacity, report directly to the Governor.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-5

Council duties

Sec. 5. (a) The council shall do the following:

(1) Develop a strategy to enhance the state's capacity to prevent and respond to terrorism.

(2) Develop a counter-terrorism plan in conjunction with relevant state agencies, including a comprehensive needs assessment.

(3) Review each year and update when necessary the plan developed under subdivision (2).

(4) Develop in concert with the law enforcement training academy a counter-terrorism curriculum for use in basic police training and for advanced in-service training of veteran law enforcement officers.

(5) Develop an affiliate of the council in each county to coordinate local efforts and serve as the community point of contact for the council and the United States Office of Homeland Security.

(b) The council shall report periodically its findings and recommendations to the Governor.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-6

Council executive director; duties

Sec. 6. (a) The Governor shall appoint an executive director for the council. The executive director may employ additional staff for the council, subject to the approval of the Governor.

(b) The executive director of the council shall serve as:

(1) the central coordinator for counter-terrorism issues; and

(2) the state's point of contact for:

(A) the Office of Domestic Preparedness in the United States Department of Justice; and

(B) the United States Office of Homeland Security.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-7

Council expenses and revenues; appropriation

Sec. 7. (a) The expenses of the council shall be paid from appropriations made by the general assembly.

(b) Money received by the council as a grant or a gift is appropriated for the purposes of the grant or the gift.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-8

Payment of council member salary per diem and expenses

Sec. 8. (a) Each member of the council who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for travel expenses as provided in IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the council who is a state employee but who is not a member of the General Assembly is entitled to reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana Department of Administration and approved by the budget agency.

(c) Each member of the council who is a member of the General Assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-9

Required number of votes for council to take action

Sec. 9. The affirmative votes of a majority of the voting members of the council are required for the council to take action on any measure, including final reports.

As added by P.L.123-2002, SEC.1.

IC 4-3-20-10

Receipt of confidential information

Sec. 10. (a) The council may receive confidential law enforcement information from the State Police Department, the Federal Bureau of Investigation, or other federal, state, or local law enforcement agencies.

(b) For purposes of IC 5-14-1.5 and IC 5-14-3, information received under subsection (a) is confidential.
As added by P.L.123-2002, SEC.1.

IC 4-3-20-11

Cooperation of state agencies with council and executive director

Sec. 11. All state agencies shall cooperate to the fullest extent possible with the council and the executive director to implement this chapter.

As added by P.L.123-2002, SEC.1.

IC 10-4-1-10

Sec. 10. (a) Each political subdivision within this state shall be within the jurisdiction of and served by a department of emergency management or by an inter-jurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain a county emergency management advisory council and a county emergency management organization or participate in an inter-jurisdictional disaster agency which, except as otherwise provided under this chapter, may have jurisdiction over and serve the entire county.

(c) In whatever county in this state a county emergency management advisory council does not exist by March 6, 1951, it is directed that a county emergency management advisory council be organized under the temporary chairmanship of the executive of the county seat, with the assistance of all other city and town executives in the county, the president of the county fiscal body, and the president of the county executive.

(d) The county emergency management advisory council shall consist of the following individuals or their designees:

- (1) The president of the county executives.
- (2) The president of the county fiscal body.
- (3) The mayor of each city located in the county.
- (4) An individual representing the legislative bodies of all towns located within the county.

(5) Representatives of such private and public agencies or organizations which can be of assistance to emergency management as the organizing group considers appropriate, or as may be added later by the county emergency management advisory council.

(6) One (1) commander of a local civil air patrol unit in the county or the commander's designee.

(e) Upon the organization of the county emergency management advisory council and the selection of a chairman from its membership, the organizing group shall be dissolved.

(f) The county emergency management advisory council shall exercise general supervision and control over the emergency management and disaster program of the county and shall select or cause to be selected,

with the approval of the county executive, a county emergency management and disaster director who shall have direct responsibility for the organization, administration, and operation of the emergency management program in the county and shall be responsible to the chairman of the county emergency management advisory council.

(g) Any provision of this chapter or other law to the contrary notwithstanding, the governor may require a political subdivision to establish and maintain a disaster agency jointly with one (1) or more contiguous political subdivisions with the concurrence of the affected political divisions if he finds that the establishment and maintenance of an agency or participation in one is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this chapter.

(h) Each political subdivision which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have an emergency management director designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(i) The county emergency management and disaster director and personnel of the department may be provided with appropriate office space, furniture, vehicles, communications, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other county agencies.

(j) Each local or inter-jurisdictional agency shall prepare and keep current a local or inter-jurisdictional disaster emergency plan for its area.

(k) The local or inter-jurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

(l) Each political subdivision may:

(1) appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management and disaster purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster resulting from enemy attack; provide for a comprehensive insurance program for its emergency management volunteers; and direct and coordinate the development of an emergency management program and emergency operations plan in accordance with the policies and plans set by the federal civil defense agency and the state emergency management agency;

(2) appoint, employ, remove, or provide, with or without compensation, rescue teams, auxiliary fire and police personnel, and other emergency management and disaster workers;

(3) establish a primary and one (1) or more secondary control centers to serve as command posts during an emergency;

(4) subject to the order of the Governor or the chief executive of the political subdivision, assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency management and disaster purposes and within or outside of the physical limits of the subdivision; and

(5) in the event of a national security emergency or state of emergency as provided in section 7 of this chapter, waive procedures and formalities otherwise required by law pertaining to the performance of public work, the entering into of contracts, the incurring of obligations, the employment of permanent and temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution of supplies, materials, and facilities, and the appropriation and expenditure of public funds.

(Formerly: Acts 1951, c.268, s.9; Acts 1975, P.L.110, SEC.11.) As amended by P.L.146-1983, SEC.3; P.L.8-1989, SEC.59; P.L.21-1991, SEC.12; P.L.1-1992, SEC.69; P.L.13-1993, SEC.6.

IC 34-13-3-1

Sec. 1. (a) This chapter applies only to a claim or suit in tort.

(b) The provisions of this chapter also apply to IC 34-30-14.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-2

Sec. 2. This chapter applies to a claim or suit in tort against any of the following:

(1) A member of the Bureau of Motor Vehicles commission established under IC 9-15-1-1.

(2) An employee of the Bureau of Motor Vehicles commission who is employed at a license branch under IC 9-16, except for an employee employed at a license branch operated under a contract with the commission under IC 9-16.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-3

Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or
(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;
(B) an information system; or
(C) equipment using microchips;
that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

As added by P.L.1-1998, SEC.8. Amended by P.L.142-1999, SEC.2; P.L.250-2001, SEC.6; P.L.280-2001, SEC.42; P.L.1-2002, SEC.144; P.L.161-2003, SEC.5.

IC 34-13-3-4 Version A

Note: This version of section amended by P.L.108-2003, SEC.2. See also following version of this section amended by P.L.161-2003, SEC.6.

Sec. 4. (a) The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed:

(1) for injury to or death of one (1) person in any one (1) occurrence:

(A) three hundred thousand dollars (\$300,000) for a cause of action that accrues before January 1, 2006;

(B) five hundred thousand dollars (\$500,000) for a cause of action that accrues on or after January 1, 2006, and before January 1, 2008; or

(C) seven hundred thousand dollars (\$700,000) for a cause of action that accrues on or after January 1, 2008; and

(2) for injury to or death of all persons in that occurrence, five million dollars (\$5,000,000).

(b) A governmental entity is not liable for punitive damages.

As added by P.L.1-1998, SEC.8. Amended by P.L.108-2003, SEC.2.

IC 34-13-3-4 Version B

Note: This version of section amended by P.L.161-2003, SEC.6. See also preceding version of this section amended by P.L.108-2003, SEC.2.

Sec. 4. The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed three hundred thousand dollars (\$300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars (\$5,000,000) for injury to or death of all persons in that occurrence. A governmental entity or an employee of a governmental entity acting within the scope of employment is not liable for punitive damages.

As added by P.L.1-1998, SEC.8. Amended by P.L.161-2003, SEC.6.

IC 34-13-3-5

Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of

this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) This subsection applies when the governmental entity defends or has received proper legal notice and has the opportunity to defend an employee for losses resulting from the employee's acts or omissions. Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment of a claim or suit against an employee when the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

As added by P.L.1-1998, SEC.8. Amended by P.L.192-2001, SEC.2; P.L.161-2003,

IC 34-13-3-7

Sec. 7. (a) An offender must file an administrative claim with the Department of Correction to recover compensation for the loss of the offender's personal property alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, former officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.

(b) The department of correction shall evaluate each claim filed under subsection (a) and determine the amount due, if any. If the amount due is not more than five thousand dollars (\$5,000), the department shall approve the claim for payment and recommend to the office of the attorney general payment under subsection (c). The department shall submit all claims in which the amount due exceeds five thousand dollars (\$5,000), with any recommendation the department considers appropriate, to the office of the attorney general. The attorney general, in acting upon the claim, shall consider recommendations of the department to determine whether to deny the claim or recommend the claim to the Governor for approval of payment.

(c) Payment of claims under this section shall be made in the same manner as payment of claims under IC 34-4-16.5-22.

(d) The Department of Correction shall adopt rules under IC 4-22-2 necessary to carry out this section.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-8

Sec. 8. (a) Except as provided in section 9 of this chapter, a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

(2) the Indiana political subdivision risk management commission created under IC 27-1-29; within one hundred eighty (180) days after the loss occurs.

(b) A claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under IC 27-1-29-5 if the political subdivision was not a member of the political subdivision risk management fund established under IC 27-1-29-10 at the time the act or omission took place.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-9

Sec. 9. If a person is incapacitated and cannot give notice as required in section 6 or 8 of this chapter, the person's claim is barred unless notice is filed within one hundred eighty (180) days after the incapacity is removed.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-10

Sec. 10. The notice required by sections 6, 8, and 9 of this chapter must describe in a short and plain statement the facts on which the claim is based. The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-11

Sec. 11. Within ninety (90) days of the filing of a claim, the governmental entity shall notify the claimant in writing of its approval or denial of the claim. A claim is denied if the governmental entity fails to approve the claim in its entirety within ninety (90) days, unless the parties have reached a settlement before the expiration of that period.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-12

Sec. 12. The notices required by sections 6, 8, 9, and 11 of this chapter must be in writing and must be delivered in person or by registered or certified mail.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-13

Sec. 13. A person may not initiate a suit against a governmental entity unless the person's claim has been denied in whole or in part.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-14

Sec. 14. Except as provided in section 20 of this chapter, the Governor may compromise or settle a claim or suit brought against the state or its employees.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-15

Sec. 15. Except as provided in section 20 of this chapter, the attorney general:

(1) shall advise the governor concerning the desirability of compromising or settling a claim or suit brought against the state or its employees;

(2) shall perfect a compromise or settlement which is made by the Governor;

(3) shall submit to the Governor on or before January 31 of each year a report concerning the status of each claim or suit pending against the state as of January 1 of that year; and

(4) shall defend, as chief counsel, the state and state employees as required under IC 4-6-2. However, the attorney general may employ other counsel to aid in defending or settling those claims or suits.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-16

Sec. 16. Except as provided in section 20 of this chapter, the governing body of a political subdivision may compromise, settle, or defend against a claim or suit brought against the political subdivision or its employees.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-17

Sec. 17. A court that has rendered a judgment against a governmental entity may order that governmental entity to:

(1) appropriate funds for the payment of the judgment if funds are available for that purpose; or

(2) levy and collect a tax to pay the judgment if there are insufficient funds available for that purpose.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-18

Sec. 18. (a) A claim or suit settled by, or a judgment rendered against, a governmental entity shall be paid by the governmental entity not later than one hundred eighty (180) days after the date of settlement or judgment, unless there is an appeal, in which case not later than one hundred eighty (180) days after a final decision is rendered.

(b) If payment is not made within one hundred eighty (180) days after the date of settlement or judgment, the governmental entity is liable for interest from the date of settlement or judgment at an annual rate of six percent (6%). The governmental entity is liable for interest at that rate and from that date even if the case is appealed, provided the original judgment is upheld.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-19

Sec. 19. Section 18 of this chapter does not apply if there is a structured settlement under section 23 of this chapter.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-20

Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

- (1) The requiring of contractors to carry insurance.
- (2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.
- (3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.
- (4) The purchase of casualty and liability insurance for foster parents (as defined in IC 27-1-30-4) on a group basis.

As added by P.L.1-1998, SEC.8. Amended by P.L.192-2001, SEC.3.

IC 34-13-3-21

Sec. 21. In any action brought against a governmental entity in tort, the court may allow attorney's fees as part of the costs to the governmental entity prevailing as defendant, if the court finds that plaintiff:

- (1) brought the action on a claim that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action after plaintiff's claim clearly became frivolous, unreasonable, or groundless; or

(3) litigated its action in bad faith. This award of fees does not prevent a governmental entity from bringing an action against the plaintiff for abuse of process arising in whole or in part on the same facts, but the defendant may not recover such attorney's fees twice.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-22

Sec. 22. (a) For purposes of this chapter, the following shall be treated as political subdivisions:

(1) A community action agency (as defined in IC 12-14-23-2).

(2) An individual or corporation rendering public transportation services under a contract with a commuter transportation district created under IC 8-5-15.

(3) A volunteer fire department (as defined in IC 36-8-12-2) that is acting under:

(A) a contract with a unit or a fire protection district; or

(B) IC 36-8-17.

(b) The treatment provided for under subsection (a)(2) shall be accorded only in relation to a loss that occurs in the course of rendering public transportation services under contract with a commuter transportation district.

As added by P.L.1-1998, SEC.8. Amended by P.L.1-1999, SEC.68.

IC 34-13-3-23

Sec. 23. (a) With the consent of the claimant, a political subdivision may compromise or settle a claim or suit by means of a structured settlement under this section.

(b) A political subdivision may discharge settlement of a claim or suit brought under this chapter by:

- (1) an agreement requiring periodic payments by the political subdivision over a specified number of years;
- (2) the purchase of an annuity;
- (3) by making a "qualified assignment" of the liability of the political subdivision as defined by the provisions of 26 U.S.C. 130(c);
- (4) payment in a lump sum; or
- (5) any combination of subdivisions (1) through (4).

(c) The present value of a structured settlement shall not exceed the statutory limits set forth in section 4 of this chapter; however, the periodic or annuity payments may exceed these statutory limits. The present value of any periodic payments may be determined by discounting the periodic payments by the same percentage as that found in Moody's Corporate Bond Yield Average Monthly Average Corporates, as published by Moody's Investors Service, Incorporated.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-24

Sec. 24. There is appropriated from the state general fund sufficient funds to:

- (1) settle claims and satisfy tort judgments obtained against the state; and
- (2) pay expenses authorized by this chapter, including:
 - (A) liability insurance premiums;
 - (B) interest on claims and judgments; and
 - (C) expenses incurred by the attorney general in employing other counsel to aid in defending or settling claims or civil actions against the state.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-25

Sec. 25. The attorney general shall present vouchers for the items or expenses described in section 24 of this chapter to the auditor of state. The auditor shall issue warrants on the treasury for the amounts presented.

As added by P.L.1-1998, SEC.8.

Transportation security and risk management are components of the same picture. Infrastructure vulnerability and condition combine with the dynamic of traffic movement to complete an environment of risk. Transportation security questions combine with liability and safety issues. Risk assessment and management strategies are brought to mind in this photo. (File Photo)



WELCOME TO
LAWRENCE COUNTY
HOME OF ASTRONAUTS
GRISSOM ★ WALKER ★ BOWERSOX

Signage and Traffic Management

Introduction

Designing, installing, operating and maintaining traffic control mechanisms are vital elements of a good traffic operations program. The Manual on Uniform Traffic Control Devices (MUTCD) defines traffic control devices as, “all signs, signals, markings, and other devices used to regulate, warn or guide traffic, placed on, over or adjacent to a street, highway or pedestrian facility, or bikeway by authority of a public agency having jurisdiction.” These traffic control devices are the primary, and sometimes the only, means of communicating with drivers and pedestrians about roadway conditions. For the safest possible highways and streets, it is important that such mechanisms are used carefully, uniformly and effectively to be sure drivers and pedestrians alike understand them and can respond to them quickly.

While traveling a roadway under varying conditions of traffic, terrain and weather, drivers must receive appropriate regulatory, warning and guidance information in a uniform manner. The government unit in charge of the highway (state, county or city) is responsible for providing the traffic control devices that will give such vital information to the driver.

Uniformity in design, meaning, application, and location are the most vital features of traffic control devices. Driving conditions of high speeds, heavy volumes, complex and confusing intersections and interchanges, and roadside distractions require traffic control devices that drivers can see, recognize,

understand and react to quickly. Ignoring the basic guidelines for design and use of traffic control devices could cost counties and cities large sums of money in litigation. Following the standards and guidelines in the MUTCD and using sound engineering judgment will minimize the potential for these risks. Failure to conform to the requirements of the MUTCD may be sufficient to establish negligence, and therefore liability, in the event of a resulting accident.

It is also important that all signage decisions are well documented. If a decision is made that a sign is not needed at a location, and there is documentation outlining the reasons for that decision, liability can be reduced in the event of an accident.

Government agencies can reduce tort liability suits involving traffic control devices by implementing these five basic principles:

1. Know the laws relating to traffic control devices
2. Conduct, maintain and document an inventory of devices
3. Replace devices at the end of their effective life
4. Maintain devices to assure they are readable and free of obstructions
5. Apply state traffic control device specifications and standards

(See Chapter 8, Transportation Security and Risk Management, for practical tips to reduce agency tort liability.)

The Manual on Uniform Traffic Control Devices (MUTCD)

The Manual on Uniform Traffic Control Devices, or MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways. It is recognized as the national standard for traffic control devices on all roads open to public travel in the United States (in accordance with the United States Code, Title 23, Sections 109d and 402a).

The manual was first developed in 1927 as the Manual and Specifications for the Manufacture, Display, and Erection of U.S. Standard Road Markers and Signs. It has gone through numerous revisions and was last published in 2000 as the Millennium Edition.

This sign on State Road 37 near Bedford proudly proclaims Lawrence County as the home of astronauts Grissom, Walker and Bowersox. The sign is an excellent example of welcoming introduction to the community. Its message and permanence sends a strong and positive message about the community and the locale. (Photo by Tom Martin, Indiana LTAP)

The text of the MUTCD is classified according to these four headings:

- **Standard.** A statement of required, mandatory or specifically prohibitive practice regarding a traffic control device. All standards are labeled and the text appears in bold large type. The verb *shall* is typically used.
- **Guidance.** A statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation is appropriate. All Guidance statements are labeled and the text appears in large type. Guidance text is the same size as Standard text, but it is not bold. The verb *should* is typically used.
- **Option.** A statement of practice that is a permissive condition and carries no requirement or recommendation. Options may contain allowable modifications to a Standard or Guidance. All Option statements are labeled, and the text appears in small type. The verb *may* is typically used.
- **Support.** An informative statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled and the text appears in small type. The verbs *shall*, *should*, and *may* are not used in Support statements.

The Federal Highway Administration (FHWA) publishes the MUTCD. An electronic version is posted on the FHWA Web site; hard copies were not printed for cost reasons. The Web site version is also more efficient and reliable in keeping revisions up to date. Bound copies of the manual, along with the CD-ROM, are available through a number of national associations, including:

- American Association of State Highway and Transportation Officials (AASHTO) – www.aashto.org
- Institute of Transportation Engineers (ITE) – www.ite.org
- American Traffic Safety Services Association (ATSSA) – www.atssa.com
- Government Printing Office (GPO) – www.gpo.gov

Local Authority

Local authorities can adopt additional traffic regulations with respect to streets and highways under their jurisdiction by way of an ordinance, as long as the ordinance does not conflict with or duplicate a statute. Any fines assessed for a violation of a traffic ordinance adopted by a local authority may be deposited into the general fund of the appropriate political subdivision. (IC 9-21-1-2)

General Information

A local authority, with respect to streets and highways under its jurisdiction and within the reasonable exercise of police power, may:

- Regulate the standing or parking of vehicles.
- Regulate traffic by means of police officers or traffic control signals.
- Regulate or prohibit processions or assemblages on the highways.
- Designate a highway as a one-way highway and require that all vehicles operated on the highway move in one specific direction.
- Regulate the speed of vehicles in public parks.
- Designate a highway as a through highway and require that all vehicles stop before entering or crossing the highway.
- Designate an intersection as a stop intersection and require all vehicles to stop at one or more entrances to the intersection.
- Restrict the use of highways as authorized in IC 9-21-4-7.
- Regulate the operation of bicycles and require registration and licensing of bicycles, including a registration fee.
- Regulate or prohibit the turning of vehicles at intersections.
- Alter the prima facie speed limits authorized under IC 9-21-5.
- Adopt other traffic regulations specifically authorized by this article.
- Adopt regulations governing traffic control on public school grounds when requested by the governing body of the school corporations.

(IC 9-21-1-3)

Local control of state highways that pass through cities and towns include the provisions of IC 9-21 and of the regulations passed by the Indiana Department of Transportation. (IC 9-21-1-5) (Notwithstanding IC 9-23-20 and IC 9-21-5)

A city or town may, by ordinance, authorize and pay for signs to be erected along the routes of state highways if the following conditions are met:

- The sign is an information sign stating only that a famous person is or was a resident of that city or town.
- The sign conforms to the manual on traffic control device standards for historical signs.
- A copy of the sign ordinance is sent to the bureau of the Indiana Department of Transportation.

The commissioner of the Indiana Department of Transportation may, within sixty (60) days after the effective date of an ordinance adopted under the preceding conditions, prohibit erection or cause removal of the sign if the bureau finds that it:

- Creates a traffic hazard; or
- Expresses a commercial or partisan political message. (IC 9-21-1-4)

County Authority for Roads Making Up County Boundaries

A county legislative body may adopt ordinances regulating traffic on any highway in the county highway system, subject to **IC 9-21**. (**IC 8-17-1-40**) Each county is responsible for construction, reconstruction, maintenance, and operation of the roads, including the ditches and signs, comprising its southern and eastern boundaries.

The county executives of two adjoining counties may enter into an agreement under **IC 36-1-7** for the construction, reconstruction, maintenance, or operation of any road or part of a road that makes up the boundary between the two counties. (**IC 8-17-1-45**)

Whenever it is necessary to erect, repair or purchase a bridge crossing a stream that forms a boundary line between two or more counties, the executive of either county may aid in the erection, repair or purchase of that bridge, and must notify the other county of its intent. If the other county agrees to provide aid, both executives must order preparation of a survey, an estimate, plans and specifications for presentation at a joint session. If an executive fails to participate in building, repairing or purchasing the bridge, then the executive of the other county may proceed after obtaining written consent of the landowner in the adjoining county whose land will be occupied by any part of the bridge. (**IC 8-20-1-35**)

City Traffic Engineer

The city legislative body may, by ordinance, establish a department of traffic engineering (**IC 36-9-7-2**) consisting of a city traffic engineer, assistants and other employees necessary to carry out departmental duties. The city executive appoints the traffic engineer.

The traffic engineer must:

- Have a thorough knowledge of modern traffic control methods;
- Be able to supervise and coordinate diverse traffic engineering activities and prepare engineering reports; and
- Either:
 - Be a registered professional engineer who has practiced traffic engineering for at least one year;
 - Have a certificate of engineer-in-training under **IC 25-31** and have practiced traffic engineering for at least two years; or
 - Have practiced traffic engineering for at least ten years.

A person must furnish evidence of his or her qualifications before appointment. (**IC 36-9-7-3**)

The traffic engineer is responsible only to the city executive or safety board and may act only in an advisory capacity to the executive or board. He or she also has full authority over all subordinates. (**IC 36-9-7-4**)

The traffic engineer's responsibilities include:

- Conducting all research relating to the engineering aspects of planning:
 - Public ways;
 - Lands abutting public ways; and
 - Traffic operation on public ways for the safe, convenient, and economical transportation of persons and goods.
- Advising the city executive in formulating and executing plans and policies resulting from his research;
- Studying all accident records, to which he has access at all times, in order to reduce accidents;
- Directing use of all traffic signs, traffic signals and paint markings, except on streets traversed by state highways;
- Recommending all necessary parking regulations; and
- Recommending proper traffic movement control.

(**IC 36-9-7-5**)

County Highway Engineer

A county executive, or any two or more counties acting under **IC 36-1-7** may employ a full-time county highway engineer who is responsible for supervising the design, construction, planning, traffic, and other engineering functions of the county highway department under the direction of the county executive. The engineer prepares all required surveys, estimates, plans, and specifications. (**IC 8-17-5-1**) The county highway engineer must be a registered engineer, licensed by the state board of registration for professional engineers, experienced in highway engineering and construction and a resident of Indiana during the engineer's employment. (**IC 8-17-5-2**)

The county highway engineer's responsibilities include (subject to the policies of the county executive):

- Preparing and publishing a county-wide inventory and classification of the county highway system so the total county federal-aid secondary system is included in the county primary or arterial system of roads.
- Preparing and keeping a perpetual inventory of all bridges and culverts that serve the county highway system. The inventory must show location, dimensions, condition, and the year of construction for all bridges and major culverts.
- Preparing and publishing design, construction, and maintenance standards for those county arterial, feeder, and local roads that make the best and most economical use of local road materials.

- Preparing a long-range county-wide program of road and bridge construction and improvements, prioritizing proposed projects. The program must cover a period of at least four years.
- Investigating requests and petitions for road or bridge improvements received either by the county executive or at public hearings, and make recommendations to the county executive.
- Preparing surveys, designs, plans and specifications for all county road and bridge construction projects. Preparing contracts and advertising for bids.
- Inspecting construction and materials of all county road and bridge construction projects, reporting the status of construction work to the executive, and certifying completed construction projects.
- Developing a county-wide program of traffic safety that provides for traffic control signs, signals, and speed limits, warning protection at railroad crossings, load limits, and detour routings.
- Inspecting and approving construction of subdivision streets that will become part of the county highway system, and recommending appropriate action to the executive when roads and streets in subdivisions are being taken into the county highway system.
- Preparing engineering estimates and making recommendations to the executive concerning materials and equipment for annual budgeting of both construction and maintenance funds.

(IC 8-17-5-6)

See Chapter 2, Local Authority, for additional information on local authority topics.

Signage

Unauthorized Signs, Signals or Markings

The Indiana Department of Transportation has responsibility to place and maintain traffic control devices that conform to the state manual and specifications as necessary to regulate, warn or guide traffic on all state highways. This includes the state-maintained routes through a city or town. A local authority may not place or maintain a traffic control device on a highway in the state highway system or the state-maintained routes through a city or town until the authority has received written permission from the Indiana Department of Transportation. If INDOT determines, after an engineering and traffic investigation, that any traffic control signal is not necessary, they will remove the signal and it will be returned to the authority responsible for its placement. If INDOT determines that a traffic control signal now in place is necessary for the safe, convenient, economical and orderly movement of traffic, the signal must remain in place and INDOT will affix a tag or seal showing that it has been approved by the Indiana Department of Transportation. (IC 9-21-4-2)

A local authority must place and maintain traffic control devices on highways under its jurisdiction, not including state highways, to regulate, warn or guide traffic. (IC 9-21-4-3)

A person may not place, maintain or display on or in view of a highway an unauthorized sign, signal, marking or device that:

- Purports to be, is an imitation of, or resembles an official traffic control device or a railroad sign or signal;
- Attempts to direct the movement of traffic; or
- Hides from view or interferes with the effectiveness of an official traffic control device or a railroad sign or signal.

(IC 9-21-4-4)

A person may not place, maintain, or display a flashing, rotating, or alternating light, beacon, or other lighted device that:

- Is visible from a highway; and
- May be mistaken for or confused with a traffic control device or for an authorized warning device on an emergency vehicle.

Guide Signs

Guide signs are used to identify the name or number associated with a street or highway; the destinations that can be reached from a street or highway; and directional information related to streets, roads and destinations. The MUTCD divides guide signs into two types, according to the kind of facility upon which they are used:

- Conventional roads;
- Expressways and freeways.

Guide signs for each of these types can be classified into several categories and sub-categories, according to the purpose of the sign. Figures 9-1 and 9-2 show a few categories of guide signs for each type of facility.

Railroad Crossing Warning Signs

Railroad owners and operators must install and maintain, at each grade crossing with any public highway, railroad crossing signs, and number-of-tracks signs if required. The signs and warning notice must conform to the manual on uniform traffic control devices adopted under IC 9-21-2-1. (IC 8-6-6-1)

The railroad company is responsible to grade, plank, gravel or asphalt the road in which the railroad lies, in accordance with the grade and surfacing material of the street, road or alley. (IC 8-6-12-1)

The Indiana Department of Transportation can conduct a hearing to declare any grade crossing as dangerous or extra hazardous upon proper petition by:

- Five or more citizens of the state; or
- A board of county commissioners.

Categories of guide signs for conventional roads

Category	Subcategory	Examples of Guide Signs
Facility Identification	Route Markers and	"Interstate, U.S. Highway, State Highway,"
	Street Names	Street Name
	Auxiliary Markers	"Junction, Business"
	Cardinal Direction	"North, East, South, West"
	Markers	
City Identification	Arrow Markers	"Advance Turn Arrow, Directional Arrow"
	Destination	"1 City, 2 Cities"
	Distance	"1 City, 2 Cities"
Miscellaneous		"Milepost, Trailmarkers, Crossover"

Figure 9-1

Categories of guide signs for expressways and freeways

Category	Subcategory	Examples of Guide Signs
Interchange Identification	Advance Guide	Interchange Advance Guide
	Sequence	"Sequence, Community Interchanges"
Lane Position Information	Gore	Gore
	Exit Only	Exit Only
Destination Information	Pull Thru	Pull Thru
	Distance	Distance
Miscellaneous		Milepost

Figure 9-2

(See ITE, 1997. Traffic Signing Handbook, 38 and 39)

If INDOT finds the crossing to be unsafe, they can require that automatic train-activated warning signals or other crossing safety devices be installed. The petition, hearing, and all proceedings must conform to IC 4-21.5. (IC 8-6-7-1) INDOT uses a Federal Rail Administration database that lists crossings and various associated factors. INDOT then assigns the dollar amount needed to correct the problem at each crossing and ranks each crossing with a resulting benefit/cost ratio. With fixed resources, INDOT goes down the list and funds crossings until the available monies have been depleted.

Traffic Control Devices

The purpose of traffic control devices is to promote highway safety and efficiency. These devices notify road users of regulations and provide warnings and guidance for the safe and efficient operation of all elements of the traffic stream. (MUTCD, 2000)

To be effective, a traffic control device should meet five basic requirements:

- Fulfill a need
- Command attention
- Convey a clear, simple meaning
- Command respect from road users
- Give adequate time for proper response

(MUTCD, 2000)

Traffic control is accomplished through many devices, mainly signs. Signs are the principal mechanism for regulating, warning and guiding traffic. Effective signs follow a five-step process:

1. Need and selection
2. Design and fabrication

3. Placement
4. Maintenance
5. Management

When considering if a sign is needed, the engineer must understand road user information needs. These questions should be addressed:

- From a given lateral and longitudinal position on the roadway, what information does the user need?
- Are there any on- or off-road conditions that would contradict what the driver expects?
- Is a specific action required by the road user?
- Are signs located so the user will be able to see, comprehend and attend to the intended message?
- For what part of the driver population is the sign being designed?
- Does the sign fit the overall sign system?

Traffic Management

Highway Classification

The highway and street system of Indiana consists of the following:

- The state highway system.
- A county arterial highway system in each county.
- A county local highway system in each county.
- A municipal arterial street system in each municipality.
- A municipal local street system in each municipality.

(IC 8-23-4-1)

The state highway system is designated by INDOT and consists of the principal arterial highways in Indiana. (IC 8-23-4-2)

The county executive in each county selects the county arterial highway system. The system is selected on the basis of the greatest general importance to the county after an evaluation of each road in the county, including municipal connecting links and the state highway system. In selecting the county system, the executive must consider the following:

- The kind and amount of traffic on a highway.
- The length and condition of a highway.
- The mileage that can be effectively improved to specified standards with available funds.
- Any other applicable data.

(IC 8-23-4-3)

The agency responsible for highways in each municipality with a population of at least five thousand selects a system of arterial streets for the municipality. The system is to be selected, using engineering standards, on the basis of greatest general importance after an evaluation of each highway in the municipality. The system may not include highways that are part of the state highway system.

The agency responsible for highways in each municipality with a population of less than five thousand may limit streets selected for the arterial system to extensions of the county arterial street system or the municipal arterial street system of adjoining municipalities into or through the municipality.

(IC 8-23-4-4)

Traffic Signals

Each traffic control signal on a street or highway within Indiana must conform to the standards, specifications, and warrants set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways. (IC 9-21-3-1)

The MUTCD gives eight warrants for traffic signals.

- Warrant 1 – Eight-Hour Vehicular Volume
- Warrant 2 – Four-Hour Vehicular Volume
- Warrant 3 – Peak Hour Volume
- Warrant 4 – Pedestrian Volume
- Warrant 5 – School Crossing
- Warrant 6 – Coordinated Signal System
- Warrant 7 – Crash Experience
- Warrant 8 – Roadway Network

Explanations of these warrants can be found in Chapter 4C of the MUTCD.

Each traffic signal on a street or highway within Indiana may be erected only after traffic engineering studies that verify its need have been completed.

If the proposed installation is in the immediate vicinity of a school, and the installation does not meet the requirements of IC 9-21-3, the government unit responsible for traffic control at the location must grant a special hearing to anyone who has properly petitioned for installation of a traffic signal. (IC 9-21-3-2)

Each traffic signal on a street or highway in Indiana that does not conform to Indiana Code must be removed by the government agency having jurisdiction over the highway. (IC 9-21-3-3)

No public or private agency may erect a traffic control device on a state-maintained highway without written permission from the Indiana Department of Transportation.

If a traffic signal is to be installed on a state highway in a city or town, INDOT will:

- Install any signal that meets the standards, specifications and warrants set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways; or
- Grant written permission to a city or town to erect the signal if it is not possible for the state to install the signal immediately. (IC 9-21-3-6)

Limited-Access Facilities

INDOT and the highway authorities of the counties and municipalities that have jurisdiction over the highway may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited-access facilities for public use on all or any part of a highway whenever the department or authority determines that traffic conditions, present or future, will justify those facilities. The department or an authority that has jurisdiction over a highway may regulate, restrict or prohibit use of limited-access facilities on that highway by various classes of vehicles or traffic. (IC 8-23-8-1)

The department and the highway authorities may also divide a limited-access facility into separate roadways by constructing raised curbing, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes and other devices and indicate the proper lane for traffic by appropriate signs, markers, stripes, and other means. (IC 8-23-8-2)

The department or the highway authority of a county or municipality may designate and establish limited-access facilities as new and additional facilities, or may designate and establish an existing street or highway to be included within a limited-access facility. The department, county or municipality may eliminate intersections of limited-access facilities at grade with existing state and county roads and municipal streets by:

- Grade separation or service road; or
- Closing off the roads and streets at the right-of-way boundary line of the limited-access facility.

After a limited-access facility is established, a highway or street that is not part of the facility may not intersect the facility at grade. A municipal street, a county or state highway or other public way may not open into or connect with a limited-access facility without prior consent from the authority that has jurisdiction over the facility. Consent under this subsection may be given only if the public interest is served. (IC 8-23-8-4)

Speed Limits

Whenever a local authority determines, on the basis of an engineering and traffic investigation, that the maximum speed permitted under IC 9-21-5 is greater or less than reasonable and safe under the conditions found on a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit on the highway. The maximum limit declared may do any of the following:

- Decrease the limit within urban districts, but not to less

than twenty (20) miles per hour.

- Increase the limit within an urban district, but not to more than fifty-five (55) miles per hour during daytime and fifty (50) miles per hour at night.
- Decrease the limit outside an urban district, but not to less than thirty (30) miles per hour.
- Decrease the limit in an alley, but not to less than five (5) miles per hour.
- Increase the limit in an alley, but not to more than thirty (30) miles per hour.

A local authority in its jurisdiction may determine by an engineering and traffic investigation the proper maximum speed for all local streets and shall declare a reasonable and safe maximum speed for an urban district. The altered limit is effective when appropriate signs giving notice of that limit are erected on the street or highway.

A local authority may not alter a speed limit on a highway or extension of a highway in the state highway system. However, a city or town may establish speed limits on state highways upon which a school is located, although a speed limit established under this is valid only if the following conditions are met:

- The limit is not less than twenty (20) miles per hour.
- The limit is imposed only in the immediate vicinity of the school.
- Children are present.
- The speed zone is properly signed.
- The Indiana Department of Transportation has been notified by certified mail.

A local authority may decrease a limit on a street to not less than fifteen (15) miles per hour if the following conditions exist:

- The street is located within a park or playground established under IC 36-10.
- The board established under IC 36-10-3; board established under IC 36-10-4; or park authority established under IC 36-10-5; requests the local authority to decrease the limit.
- The speed zone is properly signed.

(IC 9-21-5-6)

Whenever INDOT or a local authority within their jurisdiction determines, based on an engineering and traffic investigation, that slow speeds on a part of a highway consistently impede normal and reasonable traffic movement, INDOT or the local authority may determine and declare a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law. A limit determined and declared by appropriate resolution, regulation, or ordinance becomes effective when appropriate signs or signals giving notice of the limit of speed are erected along the affected part of a highway. (IC 9-21-5-8)

Weights and Loads

Local authorities, with respect to highways under their jurisdiction, may by ordinance:

- Prohibit vehicles from operating on any highway; or
- Prohibit operation of trucks or other commercial vehicles;
- Impose limitations on weight, size, or use of vehicles on designated highways;
- Impose restrictions on weight of vehicles operated on any highway for a total period not to exceed ninety (90) days in any one year, whenever any highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed without these regulations. Often referred to as "Frost Laws," these do not, however, apply to highways in the state highway system and state-maintained routes through cities and towns.

Any prohibitions and limitations must be designated by appropriate signs placed on the affected highway areas, and ordinances may not be enforced until the appropriate signs have been erected.

The Indiana Department of Transportation has the same authority as local authorities to determine by executive order and to impose restrictions on weight, size, and use of vehicles operated in the state highway system, including state-maintained routes through cities and towns. These restrictions also cannot be enforced until signs giving notice of the restrictions are erected on the affected part of the highway.

A local authority may not prohibit operation of buses that are not more than forty-five (45) feet in length on any segment of the primary system, as defined in **IC 8-23-1-33**. (**IC 9-20-1-3**)

A person may not operate, or cause to be operated, a vehicle or combination of vehicles having weight in excess of one or more of the following limitations listed in **IC 9-20-4-1** on an Indiana highway. (**IC 9-20-4-1**)

INDOT or the local authority responsible for the repair or maintenance of a bridge, causeway, or viaduct, may reduce the gross load weight allowed below the maximum load prescribed in **IC 9-20-4-1** and **IC 9-20-5**, if the authority determines that the maximum load is greater than the bridge, causeway, or viaduct can sustain without serious damage or is unsafe for the vehicle. (**IC 9-20-7-2**) Proper signage must be displayed at each end of the structure, and must be legible from a distance of at least fifty (50) feet. (**IC 9-20-7-3**) If possible, a sign should be posted at each intersection preceding the structure so overweight vehicles have an opportunity to divert from the roadway.

IC 9-20-18 reviews Penalties and Enforcement for weights and loads.

Regulating Traffic on Private Property

A county, city or town (referred to as a "unit" in the Indiana Code) and the owner or lessee of a shopping center or private business property located within the unit may adopt an ordinance to regulate vehicle parking and traffic at the shopping center or private business property. This is subject to approval by the fiscal body of the unit by ordinance. (**IC 9-21-18-4**)

Highway Closings and Detours

Whenever INDOT must designate a county highway as a detour route, the department is required to keep that highway in a reasonable state of repair during the entire time it is being used as a detour. (**IC 8-23-21-1**)

INDOT can designate a county highway as an official detour route if:

- The executive of the county through which the county highway passes adopts a resolution consenting to the official detour route; and
- Under rules adopted by the department, the department determines that it is not more expensive to designate a county highway as an official detour route than to provide other means to reach a destination.

(**IC 8-23-21-4**)

An unofficial detour route is defined as the path the department, in conjunction with local officials, determines many motorists have taken or are likely to take in place of the official detour route because the path is or was:

- A shorter distance.
- A quicker trip.
- A simpler route to follow.
- Perceived as better by a motorist for any reason other than the department recognizes in its rules.

(**IC 8-23-21-0.5**)

When a state highway that was temporarily closed is reopened to traffic, the department must restore the route to a condition that:

- Is at least as good as the condition it was in before it was designated as an unofficial detour route; or
- Satisfies specifications of a written agreement between the department and the county in which the unofficial detour route is located.

(**IC 8-23-21-2**)

These routes would include any local roads or streets.

Local Traffic Safety Programs

With approval of the county legislative body or the city legislative body, the following may contract with a nonprofit organization to promote traffic safety and study traffic accident problems:

- County executive of a county
- Board of public works
- Board of public works and safety
- Department of transportation of a city

(IC 9-27-3-2)

Pedestrians

A local authority:

- May, by ordinance, prohibit pedestrians from crossing a roadway in a business district or a designated highway except in a crosswalk, which may be established by the ordinance; and
- Must mark crosswalks in a manner conforming to the uniform system of traffic control devices created under IC 9-21-3.

(IC 9-21-17-4)

Parking

The Indiana Department of Transportation, with respect to highways under its jurisdiction, may place official signs that prohibit or restrict vehicles from stopping, standing or parking on a highway where an engineering investigation has indicated such a restriction is necessary. (IC 9-21-16-8)

Entrances to Roads and Highways from Private Property

The Indiana Department of Transportation is responsible for adopting the rules and requirements for private entrances, driveways and approaches necessary to provide for drainage of the highway, preservation of the highway, and the safety and convenience of traffic on the highway. (IC 9-21-19-2)

When a highway in the state system or the state-maintained route through a city or town is constructed or reconstructed, construction of all public road approaches and existing private approaches, together with drainage structures required for the road's protection, are included as part of the improvement of the highway or state-maintained route. If it is in the interest of public safety, INDOT may require changing the location of existing drives, and the owner or occupant of the abutting property is required to make the change as INDOT directs. After the highway is completed, the owners or occupants of adjoining lands are required to keep all private entrances, driveways, and approaches from highways in good repair. (IC 9-21-19-7)

When placing drives and entrances on local roads, the following should be considered:

- Driveways should be located to provide maximum sight distance along the roadway.
- Driveways should intersect the main roadway at right angles.
- Driveways should be wide enough to handle the anticipated amount and type of traffic.

At an intersection, driveway access to a corner property from both roadways is permitted, with a minimum distance of 30-foot corner clearances from the intersection

Traffic Control in Work Zones

Construction and maintenance work on or near a road can present unexpected or unusual operating conditions to the motorist. Therefore, special attention is needed to maintain a safe roadway. The MUTCD is the standard for all work zone traffic control, and Part 6 provides regulations and guidance for traffic control in and near work zones consisting of:

- Traffic control plans
- Signs
- Channeling devices
- Pavement markings
- Lights
- Portable changeable message signs
- Arrow displays
- Flagging
- Tapers

Guardrails

Guardrail developments have been among the most dynamic of all the safety devices. New designs take the place of older non-crashworthy components. Many of the systems or components existing today are considered substandard. While a number of these may continue to function effectively, some are of questionable value. County engineers should be familiar with the standard details and applications for the State of Indiana and should look for opportunities to upgrade substandard systems or components whenever practical.

The safety of a county's guardrail systems should be a function of:

- Selection of the system to be installed or upgraded.
- Location and layout of the system.
- Maintenance of the guardrail and roadside in the immediate area of the guardrail.

Questions and Answers About Signage and Traffic Management

Q: Does the county executive have authority over highways under INDOT supervision?

Answer: Yes, with the approval of the Indiana Department of Transportation (IC 8-17-1-1)

Q: What specific right-of-way use and traffic control powers remain in the hands of local authorities?

Answer: With respect to streets and highways under their jurisdiction, local authorities can:

Regulate the standing or parking of vehicles.

Regulate traffic by means of police officers or traffic control signals.

Regulate or prohibit processions or assemblages on the highways.

Designate particular highways as one-way highways.

Regulate speed of vehicles in public parks.

Designate any highways as a through highway.

Designate an intersection as a stop intersection.

Restrict use of highways as authorized in IC 9-21-4-7

Regulate operation of bicycles.

Regulate or prohibit vehicle turns at intersections.

Alter the prima facie speed limits authorized under IC 9-21-5.

Adopt such other traffic regulations as are specifically authorized by IC 9-21-1-3.

Adopt traffic regulations governing traffic control on public school grounds when requested by the governing body of the school corporations. (IC 9-21-1-3)

Q: Who is responsible for signs on all state highways, including the state-maintained routes through a city or town?

Answer: The Indiana Department of Transportation. (IC 9-21-4-2)

Q: Can local authorities sign highways under their jurisdiction?

Answer: Yes, provided the signs conformance to the Manual on Uniform Traffic Control Devices. (IC 9-21-4-3)

Q: What is the basis for installing traffic signals?

Answer: Each traffic signal on a street or highway within Indiana may be erected only after completion of traffic engineering studies that verify that the traffic signal is necessary as set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways. (IC 9-21-3-2)

Q: What actions are to be taken when a traffic signal is found not to conform to the Indiana Manual?

Answer: Each traffic signal on a street or highway in Indiana that does not conform to Indiana Code shall be removed by the governmental agency that has jurisdiction over the highway. (IC 9-21-3-3)

Q: Can local public agencies adopt ordinances that change the basic requirements of the traffic control devices manual?

Answer: No. A government agency in Indiana that is responsible for signs and markings and for installing traffic control devices on streets and highways within Indiana shall follow the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways. (IC 9-21-4-1)

Q: Can local authorities adopt ordinances concerning traffic regulations?

Answer: Yes. A local authority may adopt by ordinance additional traffic regulations with respect to streets and highways under the authority's jurisdiction. An ordinance adopted under this subsection may not conflict with or duplicate a statute. (IC 9-21-1-2)

Q: What are the statutory guidelines governing access to limited-access roads and streets?

Answer: INDOT or the highway authority of a county or municipality may designate and establish limited-access facilities as new and additional facilities or may designate and establish an existing street or highway as included within a limited access facility. (IC 8-23-8-4)

Q: How do local authorities change or alter speed limits?

Answer: Whenever local authorities, in their respective jurisdictions, determine on the basis of an engineering and traffic investigation that the maximum speed permitted under IC 9-21-5 is greater or less than reasonable and safe under the conditions found to exist on a highway, the local authority may determine and declare a reasonable and safe maximum limit, subject to several limitations. (IC 9-21-5-6)

Q: Can a local government regulate private business parking?

Answer: Yes. A unit and the owner or lessee of a private business property located within the unit may contract to empower the unit to regulate by ordinance vehicle parking and traffic at the private business property. (IC 9-21-18-4)

Q: How are truckload limits set? What role can local government play in establishing load limits?

Answer: The Indiana Department of Transportation or local authority, when charged with the repair or maintenance of a bridge, causeway or viaduct, may reduce the gross load weight allowed on the structure below the maximum load prescribed in IC 9-20-4-1 and IC 9-20-5 if the authority determines that the maximum load is greater than the bridge, causeway, or viaduct can sustain without serious damage, or without compromising the vehicle's safety. (IC 9-20-7-2). The Indiana Department of Transportation or local authority that:

- Has jurisdiction over a highway or street; and
- Is responsible for the repair and maintenance of the highway or street; may, upon proper application in writing and upon good cause shown, grant a permit for transporting heavy vehicles and loads or other objects not conforming to IC 9-20 if the department or authority finds that other traffic will not be seriously affected and the highway or bridge will not be seriously damaged. (IC 9-20-6-2)

Q: Is there a state law regulating privately owned construction equipment on public streets?

Answer: Yes. IC 9-20-3 governs dimensions of vehicles.

Chapter 9 Statutes

IC 8-6-6-1

Sec. 1. It is a Class C infraction for a person, or the lessee or receiver of any person, who owns or operates any line of steam or interurban railroad to run trains without installing and maintaining, at each grade crossing of its railroad with any public highway, railroad crossing signs (crossbucks) and number of tracks signs if required, placed at right angles with the highway, where possible. The construction of the signs and warning notice must be in conformance with the manual on uniform traffic control devices adopted under IC 9-21-2-1. (Formerly: Acts 1911, c.224, s.1; Acts 1913, c.242, s.1.) As amended by Acts 1978, P.L.2, SEC.824; Acts 1982, P.L.76, SEC.1; P.L.2-1991, SEC.58.

IC 8-6-7-1

Sec. 1. The Indiana Department of Transportation shall, upon proper petition by:

(1) five (5) or more citizens of this state; or

(2) a board of county commissioners; conduct a hearing to declare as dangerous or extra hazardous any grade crossing in this state that the department finds to be of such a character as that the safety of the users of the highway requires the installation of automatic train-activated warning signals or other crossing safety devices. The petition, hearing, and all proceedings must conform with IC 4-21.5.

(Formerly: Acts 1931, c.89, s.1; Acts 1933, c.61, s.1; Acts 1935, c.234, s.1; Acts 1965, c.200, s.1.) As amended by P.L.384-1987(ss), SEC.64; P.L.18-1990, SEC.74.

IC 8-6-12-1

Sec. 1. (a) Each railroad company whose road or tracks lie in any public street, road, or alley in any city, town, or county shall properly grade, plank, gravel, or asphalt the road and tracks in accordance with the grade and surfacing material of the public street, road, or alley in such a manner as to afford security for life and property of persons and vehicles using the public streets, roads, or alleys.

(b) If a railroad company fails to comply with the provisions of this section, the city, town, or county in which the public street, road, or alley is located may, after thirty (30) days written notice to the superintendent or regional engineer of railroad company, do the work and either:

(1) recover the amount of the cost thereof from the railroad company by suit filed in any court of competent jurisdiction, in which case the city, town or county may collect reasonable attorney fees; or

(2) certify the amount owed to the county auditor who shall prepare a special tax duplicate to be collected and settled for by the county treasurer in the same manner and at the same time as property taxes are collected; provided, that before the municipal corporation, city, town, or county shall undertake to do the work themselves they shall notify an agent of the railroad as to the time and place.

(Formerly: Acts 1969, c.174, s.1.) As amended by P.L.62-1984, SEC.103.

IC 8-17-1-40

Sec. 40. A county legislative body may adopt ordinances regulating traffic on any highway in the county highway system, subject to IC 9-21.

(Formerly: Acts 1919, c.112, s.40.) As amended by P.L.86-1988, SEC.102; P.L.113-1989, SEC.6; P.L.2-1991, SEC.61.

IC 8-17-1-45

Sec. 45. (a) Each county is responsible for the construction, reconstruction, maintenance, and operation of the roads, including the ditches and signs for those roads, making up its southern and eastern boundaries.

(b) The county executives of two (2) adjoining counties may enter into an agreement under IC 36-1-7 for the construction, reconstruction, maintenance, or operation of any road or part of a road that makes up the boundary between the two (2) counties. In addition to the requirements of IC 36-1-7-3, an agreement under this section must provide for the following:

- (1) The division of costs between the counties.
- (2) The schedule for the work.
- (3) The method of resolving disputes concerning the agreement if any arise.
- (4) Any other terms the counties consider necessary.

(Formerly: Acts 1971, P.L.102, SEC.1.) As amended by P.L.86-1988, SEC.105; P.L.113-1989, SEC.8; P.L.84-1991, SEC.1; P.L.98-2000, SEC.7.

IC 8-17-5-1

Sec. 1. A county executive, or any two (2) or more counties acting under IC 36-1-7 may employ a full-time county highway engineer who is responsible for supervising the design, construction, planning, traffic, and other engineering functions of the county highway department under the direction of the county executive. The engineer shall prepare all required surveys, estimates, plans, and specifications.

(Formerly: Acts 1963, c.131, s.1.) As amended by Acts 1981, P.L.11, SEC.61; P.L.86-1988, SEC.123.

IC 8-17-5-2

Sec. 2. The county highway engineer must be a registered engineer, licensed by the state board of registration for professional engineers, experienced in

highway engineering and construction and a resident of Indiana during the engineer's employment.

(Formerly: Acts 1963, c.131, s.2; Acts 1971, P.L.104, SEC.1.) As amended by P.L.86-1988, SEC.124.

IC 8-17-5-6

Sec. 6. The county highway engineer shall, subject to the policies of the county executive, perform the following functions:

- (1) Prepare and publish a county-wide inventory and classification of the county highway system so that the total county federal aid secondary system is included in the county primary or arterial system of roads.
- (2) Prepare and keep a perpetual inventory of all bridges and culverts serving the county highway system. The inventory must show the location, dimensions,

condition, and the year of construction for all bridges and major culverts.

(3) Prepare and publish standards of design, construction, and maintenance of the county arterial, feeder, and local roads that make the best and most economical use of local road materials.

(4) Prepare a long-range county-wide program of road and bridge construction and improvements, with the proposed projects arranged in order of priority.

The program of proposed projects must cover a period of at least four (4) years.

(5) Investigate requests and petitions for road or bridge improvements that are received either by the county executive or at public hearings, and make recommendations to the county executive.

(6) Prepare surveys, designs, plans, and specifications for all county road and bridge construction projects, prepare contracts, and advertise for bids.

(7) Make construction and materials inspection of all county road and bridge construction projects, inform the executive of the status of construction work, and certify completed construction projects.

(8) Develop a county-wide program of traffic safety that provides for traffic control signs, signals, and speed limits, warning protection at railroad crossings, load limits, and detour routings.

(9) Inspect and approve the construction of subdivision streets that are to be taken into the county highway system, and recommend appropriate action to the executive when roads and streets in subdivisions are being taken into the county highway system.

(10) Prepare engineering estimates and make recommendations to the executive concerning the materials and equipment needed in the annual budgeting of both construction and maintenance funds.

(Formerly: Acts 1963, c.131, s.6.) As amended by P.L.86-1988, SEC.127.

IC 8-20-1-35

Sec. 35. (a) Whenever public convenience requires the erection, repair, or purchase of any bridge across a stream forming the boundary line between two (2) or more counties (and in all cases where a stream crosses a public highway forming the boundary line between two [2] or more counties, and where the stream requires a bridge of more than twenty [20] feet in length) the executive of either county may aid in the erection, repair, or purchase of the bridge and shall notify the other county of its intent.

(b) If the executive of the other county also agrees to provide aid, both executives shall, by concurrent resolution, order the preparation of a survey, an estimate, plans, and specifications for presentation at a joint session. The executives shall place the plans and specifications

agreed upon at the meeting on file with the auditor of the county that first offered to aid in the erection or repair of the bridge. The auditor shall keep a complete record of all the proceedings relating to the bridge.

(c) If an executive fails, for a period of thirty (30) days after receiving notice, to join in the building, repair, or purchase of the bridge, then the executive of the first county may build, repair, or purchase the bridge, after first obtaining the written consent of the landowner in the adjoining county whose land will be occupied by any part of the bridge.

(d) The county executives shall jointly appoint a person who will supervise the erection or repair of the bridge, subject to rules adopted by the executives. The executives may require the individual supervising the work to give bond in the manner prescribed by IC 5-4-1.

(e) The executives shall fix the appropriation to pay the cost of the improvement in a joint resolution.

(f) If any county refuses to join in the improvement of the bridge, the county desiring the improvements may proceed on its own, and when the cost does not exceed ten thousand dollars (\$10,000), the county making the improvement may recover from each adjoining county affected by the improvement the amount that the county should have paid had it joined in the improvement. If the claim is litigated, the judgment shall include a reasonable fee for the plaintiff's attorney.

(g) All executives in advertising for bids, letting contracts, and requiring affidavits and bonds for bidders and contractors shall proceed under IC 36-1-12. Each county shall be the owner of an interest in any bridge erected, repaired, or purchased under this section.

(Formerly: Acts 1905, c.167, s.45; Acts 1911, c.220, s.1; Acts 1913, c.74, s.1.) As amended by Acts 1981, P.L.57, SEC.25; P.L.86-1988, SEC.187; P.L.113-1989, SEC.10.

IC 8-23-4-1

Sec. 1. The highway and street system of Indiana consists of the following:

- (1) The state highway system.
- (2) A county arterial highway system in each county.
- (3) A county local highway system in each county.
- (4) A municipal arterial street system in each municipality.
- (5) A municipal local street system in each municipality.

As added by P.L.18-1990, SEC.213.

IC 8-23-4-2

Sec. 2. (a) The state highway system shall be designated by the department. The total extent of the state highway system may not exceed twelve thousand (12,000) miles. The state highway system consists of the principal arterial

highways in Indiana and includes the following:

(1) A highway to the seat of government in each county.

(2) Connecting arteries and extensions through municipalities.

(b) In determining the highways or sections of highways that are a part of the state highway system, the department shall consider the following:

(1) The relative importance of each highway to county or municipal government.

(2) Existing business and land use.

(3) The development of natural resources, industry, and agriculture.

(4) The economic welfare of Indiana.

(5) The safety and convenience of highway users.

(6) The financial capacity of the state to reconstruct, construct, and maintain the highways selected to desirable standards.

(c) The state highway system shall be classified for purposes of management, establishment of standards, and priority for use of funds and resources. Classification of the system may conform to the department's designation of the state's federal aid system.

As added by P.L.18-1990, SEC.213.

IC 8-23-4-3

Sec. 3. (a) The county arterial highway system shall be selected by the county executive in each county. The system shall be selected on the basis of the greatest general importance to the county, after an evaluation of each road in the county, including municipal connecting links and the state highway system. In selecting the county system, the executive shall consider the following:

(1) The kind and amount of traffic on a highway.

(2) The length and condition of a highway.

(3) The mileage that can be effectively improved to specified standards with available funds.

(4) Any other applicable data.

The arterial highways selected by the executive under this section constitute the county arterial highway system of that county.

(b) The county executive may from time to time add, relocate, or delete highways from the county arterial highway system by following the procedure provided in subsection (a).

(c) If a highway or a segment of a highway is deleted from the county arterial highway system under subsection (b), the highway or segment may:

(1) become a part of the county local highway system;

(2) if located in a municipality, become a part of the system of major streets or local streets of the municipality,

subject to agreement between the county executive and the highway authority of the municipality; or

(3) be abandoned.

(d) All roads under the jurisdiction of the county highway authorities of each county not included in a county arterial highway system constitute the county local highway system of that county.

As added by P.L.18-1990, SEC.213.

IC 8-23-4-4

Sec. 4. (a) The agency responsible for highways in each municipality with a population of at least five thousand (5,000) shall select a system of arterial streets for the municipality. The system shall be selected on the basis of the greatest general importance to the municipality after an evaluation of each highway in the municipality. The system may not include highways that are part of the state highway system. The system of arterial streets must connect focal points of traffic interest, provide communication with other communities and outlying areas and provide for the continuity of the county arterial highway system into or through the municipality. The agency shall use engineering standards in selecting the streets.

(b) The agency responsible for highways in each municipality with a population of less than five thousand (5,000) may limit streets selected for the arterial street system to extensions of the county arterial street system or the municipal arterial street system of adjoining municipalities into or through the municipality.

(c) The system of arterial streets selected by an agency under subsection (a) or (b) constitutes the municipal arterial street system of that municipality.

(d) The agency responsible for highways in a municipality may from time to time add, relocate, or delete highways from the municipal arterial highway system by following the procedure provided in subsection (a) or (b).

(e) If a highway or a segment of a highway is deleted from the municipal arterial highway system under subsection (d), it may:

(1) become a part of the municipal local highway system; or

(2) be abandoned.

(f) All roads under the jurisdiction of the agency responsible for the municipal highways of each municipality not included in a municipal arterial highway system constitute the municipal local highway systems of that municipality.

As added by P.L.18-1990, SEC.213.

IC 8-23-8-1

Sec. 1. The department and the highway authorities of the counties and municipalities, acting alone or in cooperation with each other or any federal agency, or state or local agency of another state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use on all or any part of a highway whenever the department or authority that has jurisdiction over the highway determines that traffic conditions, present or future, will justify the facilities. The department or a highway authority that has jurisdiction over a highway may regulate, restrict, or prohibit the use of limited access facilities on that highway by various classes of vehicles or traffic.

As added by P.L.18-1990, SEC.217. Amended by P.L.87-1991, SEC.2.

IC 8-23-8-2

Sec. 2. The department and the highway authorities may divide a limited access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices and indicate the proper lane for traffic by appropriate signs, markers, stripes, and other devices.

As added by P.L.18-1990, SEC.217.

IC 8-23-8-4

Sec. 4. (a) The department or the highway authority of a county or municipality may designate and establish limited access facilities as new and additional facilities or may designate and establish an existing street or highway as included within a limited access facility.

(b) The department, county, or municipality may provide for the elimination of intersections at grade of limited access facilities with existing state and county roads and municipal streets by:

(1) grade separation or service road; or

(2) closing off the roads and streets at the right-of-way boundary line of the limited access facility.

(c) After the establishment of a limited access facility, a highway or street that is not part of the facility may not intersect the facility at grade.

(d) A municipal street, a county or state highway, or other public way may not be opened into or connected with a limited access facility without the prior consent of the authority having jurisdiction over the facility. Consent under this subsection may be given only if the public interest is served.

As added by P.L.18-1990, SEC.217.

IC 8-23-21-1

Sec. 1. Whenever it is necessary for the department to designate and use a county highway as an official detour route, the department shall keep the highway used as an official detour route in a reasonable state of repair at all times while the highway is being used as an official detour route.

As added by P.L.18-1990, SEC.230. Amended by P.L.120-1995, SEC.3.

IC 8-23-21-2

Sec. 2. (a) When a state highway that was temporarily closed is reopened to traffic as a public thoroughfare, the department shall place the official detour route in the condition agreed to in writing by the department and the county before the official detour route was designated by the department.

(b) When a state highway that was temporarily closed is reopened to traffic as a public thoroughfare, the department shall restore the route that has been determined as an unofficial detour route to a condition that:

(1) is at least as good as the condition the unofficial detour route was in before it was determined by the department to be an unofficial detour route; or

(2) satisfies specifications of a written agreement between the department and the county in which the unofficial detour route is located.

(c) The department is required to restore only one (1) unofficial detour route for each official detour route under this section.

(d) Except as provided in section 4 of this chapter and if the establishment of run-arounds is determined to be the most cost effective alternative of all available alternatives, the department shall establish run-arounds instead of detours and may install temporary structures or other facilities to render the run-arounds usable by persons traveling over the highway.

As added by P.L.18-1990, SEC.230. Amended by P.L.78-1990, SEC.1; P.L.120-1995, SEC.4.

IC 8-23-21-4

Sec. 4. The department shall designate a county highway as the official detour route if:

(1) the executive of the county through which the county highway passes adopts a resolution consenting to the official detour route; and

(2) under rules adopted by the department, the department determines that it is not more expensive to designate a county highway as an official detour route than it is to provide other means for a motorist to reach a destination.

As added by P.L.120-1995, SEC.5.

IC 8-23-21-0.5

Sec. 0.5. As used in this chapter, "unofficial detour route" means the path that the department in conjunction with local officials determines many motorists have taken or are likely to take in place of the official detour route because the path is or was:

(1) a shorter distance;

(2) a quicker trip;

(3) a simpler route to follow; or

(4) perceived as better by a motorist for any other reason the department recognizes in the department's rules; than the official detour route or other means the department has prescribed for a motorist to reach a destination while a state highway, part of a state highway, or state highway bridge is closed to the public as a thoroughfare while under construction or while being repaired by the department.

As added by P.L.120-1995, SEC.2.

IC 9-20-1-3

Sec. 3. (a) This subsection does not apply to any highway or street in the state highway system. Except as provided in subsection (e), local authorities, with respect to highways under their jurisdiction, may by ordinance:

(1) prohibit the operation of vehicles upon any highway; or

(2) impose restrictions as to the weight of vehicles to be operated upon any highway; for a total period not to exceed ninety (90) days in any one (1) year, whenever any highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed without the regulation of vehicles.

(b) A local authority adopting an ordinance under subsection (a) shall erect or cause to be erected and maintained signs specifying the terms of the ordinance at each end of that part of any highway affected by the ordinance and at intersecting highways. The ordinance may not be enforced until the signs are erected and maintained.

(c) Except as provided in subsection (e), local authorities with respect to highways under their jurisdiction, except highways in the state highway system and state-maintained routes through cities and towns, may by ordinance do the following:

(1) Prohibit the operation of trucks or other commercial vehicles.

(2) Impose limitations as to the weight, size, or use of those vehicles on designated highways.

The prohibitions and limitations must be designated by appropriate signs placed on the highways.

(d) The Indiana Department of Transportation has the same authority granted to local authorities in subsections (a) and (c) to determine by executive order and to impose restrictions as to weight, size, and use of

vehicles operated upon a highway in the state highway system, including state-maintained routes through cities and towns. These restrictions may not be enforced until signs giving notice of the restrictions are erected upon the highway or part of the highway affected by the order.

(e) A local authority may not, in an ordinance passed under subsection (a) or (c), prohibit the operation of buses that are not more than forty-five (45) feet in length on any segment of the primary system (as defined in IC 8-23-1-33) that was in existence on June 1, 1991.

As added by P.L.2-1991, SEC.8. Amended by P.L.100-1991, SEC.1; P.L.122-1993, SEC.1.

IC 9-20-4-1

Sec. 1. (a) Except as provided in subsections (b) and (c), a person may not operate or cause to be operated upon an Indiana highway a vehicle or combination of vehicles having weight in excess of one (1) or more of the following limitations:

(1) The total gross weight, with load, in pounds of any vehicle or combination of vehicles may not exceed an overall gross weight on a group of two (2) or more consecutive axles produced by application of the following formula:

$$W = 500 \{ [(LN) \cdot (N-1)] + 12N + 36 \}$$

where W equals the overall gross weight on any group of two (2) or more consecutive axles to the nearest five hundred (500) pounds, L equals the distance in feet between the extreme of any group of two (2) or more consecutive axles, and N equals the number of axles in the group under consideration, except that two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six (36) feet or more. The overall gross weight limit, calculated under this subdivision, may not exceed eighty thousand (80,000) pounds.

(2) The weight concentrated on the roadway surface from any tandem axle group may not exceed the following:

(A) Thirty-four thousand (34,000) pounds total weight.

(B) Twenty thousand (20,000) pounds on an individual axle in a tandem group.

(3) A vehicle may not have a maximum wheel weight, unladen or with load, in excess of eight hundred (800) pounds per inch width of tire, measured between the flanges of the rim or an axle weight in excess of twenty thousand (20,000) pounds.

(b) The enforcement of weight limits under this section is subject to the following:

(1) It is lawful to operate within the scope of a permit, under weight limitations established by the

Indiana department of transportation and in effect on July 1, 1956, as provided in IC 9-20-6.

(2) It is lawful to operate or cause to be operated a vehicle or combination of vehicles on a heavy duty highway or an extra heavy duty highway designated by the Indiana Department of Transportation if operated within the imposed limitations.

(3) Whenever any of the weight limitations provided in subsection (a) are utilized on any interstate highway in Indiana, the reference to weight tolerance in IC 9-20-18-2 does not apply.

(4) Subsection (a) does not apply to any highway, road, street, or bridge for which a lesser weight limit is imposed by local authorities under IC 9-20-1-4 or IC 9-20-7-2. However, the local authority may by appropriate action establish and designate a county or city highway, road, or street or part of a highway, road, or street as a heavy duty highway subject to the weight limitations established under IC 9-20-5.

(5) Vehicles operated on toll road facilities are subject to rules of weight adopted for toll road facilities by the Indiana Department of Transportation under IC 8-15-2 and are not subject to subsection (a) when operated on a toll road facility.

(c) The greater of the weight limits imposed under subsection (a) or this subsection applies to vehicles operated upon an Indiana highway. The weight limits in effect on January 4, 1975, for any highway that is not designated as a heavy duty highway under IC 9-20-5 are the following:

(1) The total gross weight, with load, in pounds of a vehicle or combination of vehicles may not exceed seventy-three thousand two hundred eighty (73,280) pounds.

(2) The total weight concentrated on the roadway surface from a tandem axle group may not exceed sixteen thousand (16,000) pounds for each axle of a tandem assembly.

(3) A vehicle may not have a maximum wheel weight, unladen or with load, in excess of eight hundred (800) pounds per inch width of tire, measured between the flanges of the rim, or an axle weight greater than eighteen thousand (18,000) pounds.

As added by P.L.2-1991, SEC.8.

IC 9-20-7-2

Sec. 2. The Indiana department of transportation or local authority, when charged with the repair or maintenance of a bridge, causeway, or viaduct, may reduce the gross load weight allowed on the structure below the maximum load prescribed in IC 9-20-4-1 and IC 9-20-5 if the authority determines that the maximum load is greater than the bridge, causeway, or viaduct can sustain without serious damage or with safety to the vehicle.

As added by P.L.2-1991, SEC.8.

IC 9-20-7-3

Sec. 3. The order, resolution, or ordinance shall fix the gross weight allowed in percentage or maximum load prescribed in IC 9-20-4-1 and IC 9-20-5. An order, a resolution, or an ordinance does not take effect until signs indicating the gross weight allowed on a bridge, causeway, or viaduct are posted in a conspicuous place at each end of the structure to which the order, resolution, or ordinance applies. The signs must be legible from a distance of fifty (50) feet and must be maintained during the time the reduction is in force.

As added by P.L.2-1991, SEC.8.

IC 9-21-1-2

Sec. 2. (a) A local authority may adopt by ordinance additional traffic regulations with respect to streets and highways under the authority's jurisdiction. An ordinance adopted under this subsection may not conflict with or duplicate a statute.

(b) A fine assessed for a violation of a traffic ordinance adopted by a local authority may be deposited into the general fund of the appropriate political subdivision.

As added by P.L.2-1991, SEC.9.

IC 9-21-1-3

Sec. 3. (a) A local authority, with respect to streets and highways under the authority's jurisdiction and within the reasonable exercise of the police power, may do the following:

- (1) Regulate the standing or parking of vehicles.
- (2) Regulate traffic by means of police officers or traffic control signals.
- (3) Regulate or prohibit processions or assemblages on the highways.
- (4) Designate a highway as a one-way highway and require that all vehicles operated on the highway be moved in one (1) specific direction.
- (5) Regulate the speed of vehicles in public parks.
- (6) Designate a highway as a through highway and require that all vehicles stop before entering or crossing the highway.
- (7) Designate an intersection as a stop intersection and require all vehicles to stop at one (1) or more entrances to the intersection.
- (8) Restrict the use of highways as authorized in IC 9-21-4-7.
- (9) Regulate the operation of bicycles and require the registration and licensing of bicycles, including the requirement of a registration fee.
- (10) Regulate or prohibit the turning of vehicles at intersections.

(11) Alter the prima facie speed limits authorized under IC 9-21-5.

(12) Adopt other traffic regulations specifically authorized by this article.

(13) Adopt traffic regulations governing traffic control on public school grounds when requested by the governing body of the school corporations.

(b) An ordinance or regulation adopted under subsection (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (a)(10), (a)(11), (a)(12), or (a)(13) is effective when signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part of the highway that is affected.

As added by P.L.2-1991, SEC.9.

IC 9-21-1-4

Sec. 4. (a) Notwithstanding IC 8-23-20, IC 9-21-5, and section 5 of this chapter, a city or town may, by ordinance, authorize and pay for signs to be erected along the routes of state highways if the following conditions are met:

(1) The sign is an information sign stating only that a famous person is or was a resident of that city or town.

(2) The sign conforms to the manual on traffic control devices standards for historical signs.

(3) A copy of the sign ordinance is sent to the bureau of the Indiana Department of Transportation.

(b) The commissioner of the Indiana Department of Transportation may, within sixty (60) days after the effective date of an ordinance adopted under subsection (a), prohibit the erection of or cause removal of the sign if the bureau finds that the sign:

- (1) creates a traffic hazard; or
- (2) expresses a commercial or partisan political message.

As added by P.L.2-1991, SEC.9.

IC 9-21-1-5

Sec. 5. Local control of the routes of state highways in cities and towns includes only the power of enforcement of this article and of the regulations passed by the Indiana Department of Transportation.

As added by P.L.2-1991, SEC.9.

IC 9-21-3-1

Sec. 1. Each traffic control signal on a street or highway within Indiana must conform with the standards, specifications, and warrants set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways.

As added by P.L.2-1991, SEC.9.

IC 9-21-3-2

Sec. 2. (a) Each traffic signal installation on a street or highway within Indiana may be erected only after the completion of traffic engineering studies that verify that the traffic signal control is necessary as set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways.

(b) If:

(1) the proposed installation is in the immediate vicinity of a school; and

(2) the installation does not meet the requirements of this section; the governmental unit responsible for the control of traffic at the location shall grant a special hearing on the question to a person who has properly petitioned for the installation of a traffic signal.

As added by P.L.2-1991, SEC.9.

IC 9-21-3-3

Sec. 3. Each traffic signal upon a street or highway in Indiana that does not conform to this chapter shall be removed by the governmental agency having jurisdiction over the highway.

As added by P.L.2-1991, SEC.9.

IC 9-21-3-6

Sec. 6. (a) Except as provided in subsection (b), a public or private agency may not erect a traffic control device on a state-maintained highway without the written permission of the Indiana Department of Transportation.

(b) This subsection applies to the installation of traffic signals on a state highway in a city or town. The Indiana Department of Transportation shall:

(1) install any signal that meets the standards, specifications, and warrants set forth in the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways; or

(2) grant written permission to a city or town to erect the signal if it is not possible for the state immediately to install the signal.

As added by P.L.2-1991, SEC.9.

IC 9-21-4-2

Sec. 2. (a) The Indiana Department of Transportation shall place and, except as otherwise provided in this section, maintain traffic control devices conforming to the state manual and specifications upon all state highways, including the state-maintained routes through a city or town, as necessary to indicate and to carry out this article or to regulate, warn, or guide traffic.

(b) A local authority may not place or maintain a traffic control device upon a highway in the state highway system or the state-maintained routes

through a city or town until the authority has received written permission from the Indiana Department of Transportation.

(c) If the department determines, upon the basis of an engineering and traffic investigation, that any traffic control signal is not necessary for the safe, convenient, economical, and orderly movement of traffic, the signal shall be removed by the Indiana Department of Transportation and be returned to the authority responsible for the signal's erection. If the Indiana Department of Transportation determines, based on an engineering and traffic investigation, that a traffic control signal now in place is necessary for the safe, convenient, economical, and orderly movement of traffic, the signal must remain in place, and the Indiana Department of Transportation shall affix a tag or seal to the signal showing that the signal has been approved by the Indiana Department of Transportation.

As added by P.L.2-1991, SEC.9.

IC 9-21-4-3

Sec. 3. (a) As used in this section, "traffic calming device" means a device erected to slow traffic on residential streets, including the following:

- (1) traffic circles;
- (2) curb extensions;
- (3) neck downs;
- (4) diagonal diverters;
- (5) truncated diagonal diverters; or
- (6) chicanes.

(b) A local authority shall place and maintain traffic control devices upon highways under the authority's jurisdiction, not including state highways, the authority considers necessary to indicate and to carry out this article or local traffic ordinances or to regulate, warn, or guide traffic. All traffic control devices, except traffic calming devices, erected under this section after June 30, 1939, must conform to the Indiana manual on uniform traffic control devices for streets and highways ("the state manual"), and design specifications. However, the design and use of traffic calming devices shall conform to generally accepted engineering principles of road design, and shall not affect the requirements of the state manual and design specifications as regards any other traffic control device, as used in this chapter.

As added by P.L.2-1991, SEC.9.

IC 9-21-4-4

Sec. 4. A person may not place, maintain, or display upon or in view of a highway an unauthorized sign, signal, marking, or device that:

(1) purports to be, is an imitation of, or resembles an official traffic control device or a railroad sign or signal;

- (2) attempts to direct the movement of traffic; or
- (3) hides from view or interferes with the effectiveness of an official traffic control device or a railroad sign or signal.

As added by P.L.2-1991, SEC.9.

IC 9-21-4-6

Sec. 6. (a) A person may not place, maintain, or display an advertising sign, signal, or device on or over the roadway of a highway.

(b) A person may not place, maintain, or display an advertising sign, signal, or device on a highway in a city between the curb and sidewalk. If the curb and sidewalk join, a person may not place, maintain, or display on the sidewalk an advertising sign, signal, or device closer than ten (10) feet from the curb line. Overhanging signs may not overhang the curb.

(c) A person may not place, maintain, or display an advertising sign or device of any character within one hundred (100) feet of a highway outside the corporate limits of an incorporated city or town that obstructs the view of:

- (1) the highway; or
- (2) an intersecting highway, street, alley, or private driveway; of a person traveling the highway for a distance of five hundred (500) feet or less from the sign or device as the person approaches the highway or intersecting highway.

(d) A person may not place, maintain, or display an advertising sign or a device of a permanent or semi-permanent character on a highway right-of-way.

(e) Each sign, signal, or marking prohibited under this section is declared to be a public nuisance. The authority having jurisdiction over the highway may remove or cause to be removed the prohibited sign, signal, or marking without notice.

As added by P.L.2-1991, SEC.9.

IC 9-21-4-7

Sec. 7. (a) Whenever, under this article, the Indiana Department of Transportation designates or determines the location of, necessity for, and extent of:

- (1) traffic control devices;
- (2) state speed limits, other than maximum limits;
- (3) speed limits on elevated structures;
- (4) no-passing zones;
- (5) one-way roadways;
- (6) certain lanes for slow moving traffic;
- (7) course of turning movements at intersections;
- (8) dangerous railroad crossings requiring stops;
- (9) through highways and stop intersections;
- (10) angle parking; or

(11) restrictions on the use of highways for certain periods or for certain vehicles; the designation or determination shall be by order of the commissioner of the Indiana Department of Transportation and shall, except for subdivision (1), be evidenced by official signs or markings under this article.

(b) At a trial of a person charged with a violation of the restrictions imposed by subsection (a) and in all civil actions, oral evidence of the location and content of the signs or markings is prima facie evidence of the adoption and application of the restriction by the Indiana Department of Transportation and the validity of the adoption and application of the restriction. The Indiana Department of Transportation shall, upon request by a party in an action at law, furnish, under the seal of the Indiana Department of Transportation, a certification of the order establishing the restriction in question. A certification under this subsection shall be accepted by any court as conclusive proof of the designation or determination by the commissioner of the Indiana Department of Transportation. Certified copies shall be furnished without cost to the parties to a court action involving the restriction upon request.

(c) Whenever, under this article, a permit or permission of the Indiana Department of Transportation is required, the permit must be in writing and under the seal of the Indiana Department of Transportation.

As added by P.L.2-1991, SEC.9.

IC 9-21-5-6

Sec. 6. (a) Except as provided in subsection (e), whenever a local authority in the authority's jurisdiction determines on the basis of an engineering and traffic investigation that the maximum speed permitted under this chapter is greater or less than reasonable and safe under the conditions found to exist on a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit on the highway. The maximum limit declared under this section may do any of the following:

- (1) Decrease the limit within urban districts, but not to less than twenty (20) miles per hour.
- (2) Increase the limit within an urban district, but not to more than fifty-five (55) miles per hour during daytime and fifty (50) miles per hour during nighttime.
- (3) Decrease the limit outside an urban district, but not to less than thirty (30) miles per hour.
- (4) Decrease the limit in an alley, but to not less than five (5) miles per hour.
- (5) Increase the limit in an alley, but to not more than thirty (30) miles per hour.

(b) A local authority in the authority's jurisdiction shall determine by an engineering and traffic investigation the proper maximum speed for all local

streets and shall declare a reasonable and safe maximum speed permitted under this chapter for an urban district.

(c) An altered limit established under this section is effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice of the altered limit are erected on the street or highway.

(d) Except as provided in this subsection, a local authority may not alter a speed limit on a highway or extension of a highway in the state highway system. A city or town may establish speed limits on state highways upon which a school is located. However, a speed limit established under this subsection is valid only if the following conditions exist:

(1) The limit is not less than twenty (20) miles per hour.

(2) The limit is imposed only in the immediate vicinity of the school.

(3) Children are present.

(4) The speed zone is properly signed.

(5) The Indiana Department of Transportation has been notified of the limit imposed by certified mail.

(e) A local authority may decrease a limit on a street to not less than fifteen (15) miles per hour if the following conditions exist:

(1) The street is located within a park or playground established under IC 36-10.

(2) The:

(A) board established under IC 36-10-3;

(B) board established under IC 36-10-4; or

(C) park authority established under IC 36-10-5;

requests the local authority to decrease the limit.

(3) The speed zone is properly signed.

As added by P.L.2-1991, SEC.9. Amended by P.L.92-1991, SEC.3; P.L.1-1992, SEC.50; P.L.126-1993, SEC.1.

IC 9-21-5-8

Sec. 8. Whenever the Indiana Department of Transportation within the department's jurisdiction or a local authority within the authority's jurisdiction determines, based on an engineering and traffic investigation, that slow speeds on a part of a highway consistently impede the normal and reasonable movement of traffic, the Indiana Department of Transportation or local authority may determine and declare a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law. A limit determined under this subsection and declared by appropriate resolution, regulation, or ordinance becomes effective

when appropriate sign or signals giving notice of the limit of speed are erected along the affected part of a highway.

As added by P.L.2-1991, SEC.9.

IC 9-21-16-7

Sec. 7. (a) Except as provided in subsection (b) and except where angle parking is permitted by local ordinance for streets under local control and by order of the Indiana Department of Transportation on streets and highways in the state highway system, including routes through cities and towns, a vehicle stopped or parked upon a roadway where there is an adjacent curb must be stopped or parked with the right-hand wheels of the vehicle parallel with and within twelve (12) inches of the right-hand curb.

(b) A motorcycle stopped or parked upon a roadway where there is an adjacent curb may be stopped or parked with the rear wheel of the motorcycle to the curb and with the front tire facing the flow of traffic.

As added by P.L.2-1991, SEC.9. Amended by P.L.60-1998, SEC.1.

IC 9-21-16-8

Sec. 8. The Indiana Department of Transportation may, with respect to highways under the department's jurisdiction, place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where an engineering investigation has revealed the need for a restriction. The signs must be official signs. A person may not stop, stand, or park a vehicle in violation of the restrictions stated on the signs.

As added by P.L.2-1991, SEC.9.

IC 9-21-17-4

Sec. 4. A local authority:

(1) may, by ordinance, prohibit pedestrians from crossing a roadway in a business district or a designated highway except in a crosswalk, which may be established by the ordinance; and

(2) shall mark the crosswalks in a manner conforming to the uniform system of traffic control devices created under IC 9-21-3.

As added by P.L.2-1991, SEC.9.

IC 9-21-18-4

Sec. 4. A unit and the owner or lessee of a shopping center or private business property located within the unit may contract to empower the unit to regulate by ordinance the parking of vehicles and the traffic at the shopping center or private business property, subject to approval by the fiscal body of the unit by ordinance.

As added by P.L.2-1991, SEC.9.

IC 9-21-19-2

Sec. 2. The Indiana Department of Transportation shall adopt rules and requirements for private entrances, driveways, and approaches necessary to provide for drainage of the highway, preservation of the highway, and the safety and convenience of traffic on the highway.
As added by P.L.2-1991, SEC.9.

IC 9-21-19-7

Sec. 7. When a highway in the state highway system or the state-maintained route through a city or town is constructed or reconstructed, the construction of all public road approaches and existing private approaches, together with the drainage structures required for the road's protection, shall be included as a part of the improvement of the highway or state-maintained route. The Indiana Department of Transportation may require the changing of the location of existing drives, in the interest of safety to the motoring public, when the highway is constructed or reconstructed. The owner or occupant of the abutting property shall make a change in location under the direction of the Indiana Department of Transportation. Upon the completion of the highway, the owners or occupants of adjoining lands shall keep in repair all private entrances, driveways, and approaches from highways.

As added by P.L.2-1991, SEC.9.

IC 9-27-3-2

Sec. 2. The:

- (1) county executive of a county; or
- (2) board of public works, board of public works and safety, or the department of transportation of a city; may contract with a nonprofit organization, with the approval of the county legislative body or the city legislative body, to promote traffic safety and study traffic accident problems.

As added by P.L.2-1991, SEC.15.

IC 36-9-7-2

Sec. 2. The city legislative body may, by ordinance, establish a department of traffic engineering.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-3

Sec. 3. (a) The personnel of the department of traffic engineering consists of a city traffic engineer, his assistants, and other employees necessary to perform the duties of the department. The city executive shall appoint the traffic engineer.

(b) The traffic engineer must:

- (1) have a thorough knowledge of modern traffic control methods;

(2) be able to supervise and coordinate diversified traffic engineering activities and prepare engineering reports; and

(3) either:

(A) be a registered professional engineer who has practiced traffic engineering for at least one (1) year;

(B) have a certificate of engineer-in-training under IC 25-31 and have practiced traffic engineering for at least two (2) years; or

(C) have practiced traffic engineering for at least ten (10) years.

A person must furnish evidence of his qualifications under this subsection before he may be appointed by the executive.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-4

Sec. 4. (a) The traffic engineer is responsible only to the city executive or safety board, and he may act only in an advisory capacity to the executive or board.

(b) The traffic engineer has full authority over all his subordinates.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-5

Sec. 5. The traffic engineer shall:

(1) conduct all research relating to the engineering aspects of the planning of:

(A) public ways;

(B) lands abutting public ways; and

(C) traffic operation on public ways; for the safe, convenient, and economical transportation of persons and goods;

(2) advise the city executive in the formulation and execution of plans and policies resulting from his research under subdivision (1);

(3) study all accident records, to which he has access at all times, in order to reduce accidents;

(4) direct the use of all traffic signs, traffic signals, and paint markings, except on streets traversed by state highways;

(5) recommend all necessary parking regulations;

(6) recommend the proper control of traffic movement; and

(7) if directed to do so by ordinance, supervise all employees engaged in activities described by subdivisions (3) through (6).

As added by Acts 1981, P.L.309, SEC.80.



Asset Management

Introduction

A critical management task of the local road and street department is its capital assets and expendables. Asset management itself is the “stuff” of local road and street administration and management. Because taxpayer money buys the assets these departments manage, the assets are a public trust. The maintenance and subsequent good order of transportation assets and infrastructure have a significant impact on a community’s economic development potential. Indeed, state and local potential is integrated into a greater whole, and it is difficult to layer the task.

Asset management is most commonly described as the daily practice of collecting, maintaining and analyzing asset data for an organization. It combines engineering principles with economic theory to provide the organization with a framework for short- and long-range planning. Yet, the definition is evolving as the federal government, engineers, managers, and others grapple with the scope of what is involved.

Asset management provides ready access to quantitative and qualitative data and allows decision makers to more readily identify and focus on key administrative issues. Road and street assets for which a government agency may be responsible include:

- Signs
- Traffic signals
- Bridges and culverts
- Roads
- Pavement markings
- Lighting
- Storm sewers

This early highway sign at the intersection of State Roads 1 and 4 illustrates the asset management challenge. (Not to mention the condition of the road itself). Sign inventory control, inspection and maintenance needs must have been a big hurdle in a time of limited communications and human resources. Nevertheless, even in these more primitive times, the asset management task was vital to safety and information. Photo from the collection of R.H. “Bob” Harrell. Photographer unknown.

- Sanitary sewers
- Water distribution systems
- Guardrails
- Parking meters
- Construction equipment
- Parks and playground equipment
- Street furniture
- Vehicles
- Trees

Road and street inventory is a key element in managing the local government’s total transportation infrastructure and supporting assets. With public safety as the overriding and critical concern, the agency must know the age, condition and estimated life of these assets to effectively manage the system. Reporting the inventory must follow the reporting requirements outlined in the Government Accounting Standards Board Statement 34 (GASB 1999), which ultimately affects how the agency manages the assets and reports them in its year-end statements. Without accurate and up-to-date information, making the decisions necessary to effectively manage assets and resources is extremely difficult.

Functions of Asset Management Systems

An effective asset management system helps the government agency report on its progress in achieving goals and evaluate the process relative to those goals. It not only aids in the decision-making process, but also provides a fact-based dialogue between system users and other stakeholders, state government officials, and managers concerned with day-to-day operations.

In today’s transportation environment—characterized by high user demand, stretched budgets, declining staff resources, and an aging transportation system and infrastructure— an effective asset management system must be successful in:

- Providing data to predict asset performance
- Tracking estimated and actual costs
- Aiding in the management of maintenance activities

- Generating reports on completed activities and costs incurred.
- Helping achieve GASB 34 compliance and meeting other mandates concerning asset management.
- Reducing liability and exposure.

Keeping each asset functional involves:

- Strategic planning for asset management.
- Program budgeting and financial management, including asset valuation.
- Construction and reconstruction.
- Routine maintenance.
- Prioritizing maintenance projects.
- Responding to citizen requests.
- Providing information and reports.
- Coordinating staff and maintenance crews.
- Working with vendors and contractors.

Purchasing and installing asset management information and management software systems improve the capability of the road and street administrator in gathering the data, entering them into a database and developing the criteria for asset maintenance and management in the short and long term. Available today are sophisticated software and management systems, which are continually undergoing further refinement to improve the task of asset management.

An excellent source book, *Asset Management Primer* (USDOT/FHWA 1999), is concise and readable. Although written for federal and state agencies, the primer's principles apply as well to the local government agency.

Managing Assets

Good asset management starts with good data—accurate and consistent information. The foundation of good data is a complete and accurate initial inventory, the first large-scale inventory of all assets placed under agency control. If data do not exist in an electronic format, or if electronic data are incomplete, the agency must gather the information manually. This task requires locating and viewing each asset, assigning it a unique identifier, and collecting its vital information. Completing a manual inventory of infrastructure assets is a substantial undertaking, and may take years. However, agencies may wish to start with a few data fields and add more over time.

Before beginning the initial inventory, an agency must install and familiarize the team with the management system's software and hardware tools, the required data, and agency procedures. If the initial inventory will involve manual data collection, it is helpful to design paper forms to gather the information in the field and create corresponding forms in the software to simplify the process of data entry in the office.

System Maintenance

Once the team completes the initial asset inventory, the electronic database becomes a virtual representation of the field assets. For the data to be useful, the agency must regularly maintain this "virtual inventory" so it currently matches the actual "physical inventory," or the actual assets in the field. A few ways to ensure ongoing monitoring are to:

- *Query the database.* Perform routine checks of the database to identify any inaccuracies or inconsistencies.
- *Offer proper training.* Ongoing training of all individuals involved in collecting asset information is essential. They must be familiar not only with the tools and procedures, but also the importance of consistent and accurate data.
- *Maintain the database.* The team must not stop when it completes the collection process. Maintenance is an ongoing process, requiring attention to any physical changes to an asset.

Fail-Safe Measures

Unfortunately, some asset management systems are unsuccessful or fail to even make it off the ground. Below are some common pitfalls that an agency can avoid with proper planning. Anticipating these challenges will help head off any potential problems and ensure the success of an asset management system.

- *Unclear goals.* If the agency does not clearly define its asset management team's goals, the system may not satisfy the organization's needs.
- *Failure to implement in phases.* It's important to start small and implement a system that first meets the immediate goals. Add more data, procedures, and tools in the future.
- *Underestimating the investment.* Underestimating money, employee resources and length of time required to implement a management system is common. Be sure to properly budget and plan the process. Inquire if other agencies in the area have recently updated or installed a new asset management system, and interview their managers on their experiences.
- *Bad data.* The quantity of data is not as important as the quality. Start with the most crucial elements, and determine the standards for recording this information.
- *Poor system maintenance.* A system will not remain effective if the agency fails to use it according to procedure and does not conduct periodic evaluations. Relying on a single person to keep the system up and running is also a mistake. All levels within the organization must accept and adopt this new discipline and practice it daily.

Asset Reporting

The mid-1999 statement of the Government Accounting Standards Board contained a new requirement for state and local government agencies' asset reporting—reporting the value of assets on balance sheets. Agencies must include highway road and street infrastructure assets, such as roads, bridges, tunnels, drainage systems, water and sewer facilities, dams and lighting systems, buildings, other real estate and land, motor vehicles, signs, and signals. They may also include expendables of high dollar value—aggregate inventory. This change in reporting brings the financial statements into closer conformance with practices of business and corporate accounting. Refer to Chapter 4 for a more detailed treatment of funding issues.

Technology to the Rescue

Advances in technology are improving asset management in two key areas. First, it improves management of data collection, storage, and analysis. The agency can gather data more quickly with higher quality and spatial accuracy than ever before. It can then store, retrieve, and analyze the data with powerful servers and software. For example, the agency can more fully explore the spatial component of analysis through advances in geographical information systems (GIS) and global positioning systems (GPS). With faster and more capable computers available, the application of more sophisticated modeling software is possible.

The second important aspect of technology relates to the presentation and communication of the analytical results to decision makers inside and outside the agency. GIS allows graphical representation, which is most helpful in the communication process. It can paint a picture of what the analysis predicts.

Because much data are already available, the goal is to convert the information into a usable form. This requires:

- The ability to collect, process, and evaluate the data.
- The analytical tools to evaluate and select the most cost-effective alternative investment strategies, both within and among program areas.
- The tools and expertise to effectively communicate this information to other groups that may not be familiar with the programs or situation.

Information Management

Asset management requires much more than collating a collection of pavement, bridge and maintenance management capabilities. Improved hardware and software systems, plus analytical tools, must be linked so the information can be communicated to the decision makers in a comprehensible form. This does not necessarily imply a single database; separate databases that include compatible referencing systems for information exchange may be appropriate. The agency must

answer questions about what data to collect, at what frequency, with what level of quality and at what cost in the context of what is required for the decisions.

Analytical Tools

Engineering, economic, and behavioral models are an integral part of an asset management-based decision-making process. Analytical tools used in the course of asset management relate investment to performance of the system. The fundamental objective is to maximize benefits for users while minimizing agency costs. These tools provide a means of communicating the importance of transportation investments to the public and decision makers.

Engineering economic analysis provides a broad collection of tools that collectively allow an agency to prioritize competing investment options according to relative economic efficiency levels. These tools include life-cycle cost analysis, benefit-cost analysis, optimization, prioritization, and risk analysis. They attempt to identify the option that will achieve established performance objectives at the lowest long-term cost or provide maximum benefit for a given investment or funding level.

Management Systems and Software Tools

Despite the fact that this section describes and discusses some specific asset management software, agencies must do their homework to select the most appropriate software for their needs. They must also recognize that fast-paced development and evolution of these packages retire predecessors rapidly.

Note: The Federal Highway Administration, the Indiana Department of Transportation, and the Indiana Technical Assistance Program Center do not endorse specific systems or software tools. The information is provided here as a baseline for further research and analysis.

Pavement Management Systems

A pavement management system consists of three major components:

1. A system to regularly collect highway condition data
2. A computer database to sort and store the collected data
3. An analysis program to evaluate repair or preservation strategies and suggest cost-effective projects to maintain highway conditions

Usually, agencies combine these components with their planning needs and political considerations as they develop their annual highway repair and preservation programs.

To achieve consistency in pavement management, representatives from local governments, LTAP, and INDOT, formed the Indiana Pavement Management Advisory Committee (IMAC), which established guidelines for pavement management in Indiana.

Additions, corrections or revisions to these guidelines should be sent to the Committee for consideration. These revisions were published in 1996 (IMAC, 1996)

- The results from a Pavement Management System (PMS) must be considered in planning highway transportation work programs for which federal-aid funding is anticipated and should be used in other related planning processes. Local governments with pavement management in place have a potential advantage in requesting funding, because of the documented needs and projected project plans.
- INDOT will perform the data collection and the required analysis on state roads and local jurisdiction with NHS routes. INDOT will provide guidance and support for local agencies PMS, where possible. IPMAC strongly encourages that a PMS cover all roads in an agency's system.
- Local public agencies should have a PMS for their use on all major roads in their jurisdiction. The guidelines for PMS are a compilation of recommended features for use by local governments in developing pavement management. The PMS guidelines are intended to be flexible to meet the varied needs of both INDOT and local government.
- The objective of PMS is to provide information to local agencies to develop priorities and to help produce lists of transportation projects. The goal of PMS is to preserve or improve the appropriate service levels of a road network.

Today, a pavement management system should satisfy both the engineering and economic aspects of pavement investments and the return on investment. Using a PMS approach has proven more efficient than always focusing on the "worst first." An effective pavement management system must have the following capabilities:

The PMS must gather such data as the:

- Inventory of roads.
- Pavement condition survey.
- Work history.
- Traffic volume information.
- Information storage.

When implemented, the PMS must help produce:

- An inventory of a jurisdiction's pavement network.
- Reports for mileage certification.
- Reports for functional class determinations.
- The projected needs for the appropriate levels of service.
- Network and project investment analysis.

Through the analysis of pavement condition and operation data, the PMS must help produce:

- The segments of road that may need work over a multiple-year (2-5) planning period.
- The type of maintenance or rehabilitation needed.
- The estimated cost of the work.
- A priority for the projects that consider traffic and potential benefits of the work.

Software

An agency can create its own in-house database with Microsoft Access and ArcView to meet its needs. However, among a variety of software packages that assist in the pavement management process are Site Pavement Management Software (SPMS) from King Engineering and PAVEMENTview from CarteGraph.

SPMS

The SPMS package is both a financial and technical tool to assist in inventorying pavement condition and in maintenance planning. Its capabilities include:

- Storing information about pavement location, type, use, size, and condition in a database.
- Retrieving and sorting all pavement information (by any of the attributes stored) to create priority lists.
- Creating cost estimates.
- Measuring systemwide pavement performance, which permits performance targeting.
- Providing great flexibility in sorting, prioritizing, and assigning maintenance costs by type of pavement, use of pavement, location, or seasonal bidding variations.

Order the SPMS package from:

King Engineering, Inc.
2825 East Cottonwood Parkway
Suite 500
Salt Lake City, Utah 84121
801.990.3170
fax: 801.990.3293
e-mail: info@pavementmanagement.com

King Engineering also provides personnel training in the use of SPMS, the development of pavement evaluation criteria, the establishment of site pavement management systems, and full pavement management services. For more information, access www.pavementmanagement.com/

PAVEMENTview

This CarteGraph package helps you easily maintain pavement inventory, inspection, and maintenance information. Its features include:

- Detailed inventory of paved and unpaved road segments.
- Inspection records.
- Location identification.

- Road segment classifications.
- Queries and reports.
- On-line Structure Inventory and Appraisal (SI&A) forms.
- Record ADT history.
- Establish user-defined overall condition index.

To order PAVEMENTview and learn more about CarteGraph, visit www.cartegraph.com/

Additional information on CarteGraph software packages can be found in the “Other Assets” section below.

Bridge Management Systems

An agency’s bridge management tasks include determining which structures it must replace, rehabilitate, and maintain, given particular funding levels, and what is the optimum timing of these activities to achieve the lowest overall life-cycle costs for the bridge system. Bridge management systems (BMS) determine how and when to make bridge investments that will improve safety and preserve existing infrastructure, estimate the backlog of investment requirements, and outline project future requirements.

The INDOT Program Development Division of Bridge Management Section carries the following responsibilities (as reported by Thomas Martin, presentation entitled “Simplified Bridge Management for Counties” IN-LTAP 2000):

Bridge Inspection Unit

- Collects, reviews, maintains, and files the bridge inspection/inventory data for all state and county bridges.
- Analyzes the bridge data, and makes necessary recommendations to the districts and other divisions.
- Monitors the bridge inspection frequencies for all public bridges and for bridges that require special inspection.
- Provides guidance to the District Bridge Inspection Engineers and Consultants.
- Furnishes the National Bridge Inventory data and other bridge information to divisions, FHWA, universities, and the public.
- Generates annual bridge inspection/inventory reports to FHWA.
- Provides assistance and guidance to understand the bridge inspection/inventory codes and terminologies.

Bridge Management Unit

- Develops and implements a bridge management system for all publicly owned bridges (INDOT and county).

- Serves as a decision support tool that supplies analysis of data.
- Uses mathematical models to make predictions and recommendations.
- Proposes schedules for bridge programs within policy and budget constraints.

Software

Several software packages for management of bridge systems include Pontis, Bridgit, Paradox Bridge Inspection Software and BRIDGEview.

Pontis

Developed by Cambridge Systems for FHWA/AASHTO, Pontis features the following:

Data and analytical models

- Engineering and economic models to include deterioration prediction models
- An array of improvement options
- Updating procedures

Procedures to identify optimal maintenance and repair and rehabilitation strategies

Procedures to identify and rank capital improvements based on economic criteria

An integration model that develops a consolidated master list of recommended maintenance and capital improvements

An agency’s annual cost for Pontis is approximately \$25,000. For additional information, visit aashtoware.camsys.com/information.htm/

Bridgit

In contrast to Pontis, which conducts network-level optimization analysis and applies it at the project level, Bridgit evaluates projects and aggregates the results to develop optimal network strategies. The National Cooperative Highway Research Program developed Bridgit.

Paradox Bridge Inspection Data

This software consists of five phases:

1. Inventory. Confirm most of the data that is needed. Possible additional data items include replacement cost, replacement priority, and sufficiency rating.
2. Analysis. Define the projects by examining the data. This would include:
 - The number of bridges with $SR < 50$
 - The number of SD or FO bridges

- The number of bridges posted for reduced load
- The number of bridges posted for geometrics
- The number of bridges > 50 years old

Bridge condition can be measured by sufficiency ratings, deficiency (SD or FO), posting for load restrictions, and posting for width or height restrictions or age.

3. Alternatives. Define strategies for replacement, rehabilitation, or repair.
4. Plan. Prioritize projects, calculate funding requirements, identify funding sources, and consider cash flow to work toward the agency's goal.
5. Progress. Measure progress. Reevaluate priorities per recent inspections and update the cash-flow predictions.

BRIDGEview

Finally, CarteGraph offers this software program, which assists in bridge management through quick recording, querying, displaying, and reporting bridge and culvert information. It optimizes the inspection process, improves record accuracy and streamlines SI&A information. The following list summarizes its main highlights:

- Complete bridge inventory
- Inspection records by category and element level
- Structure history and database rollback
- Queries and reports
- On-line SI&A forms
- Complete support for FHWA, NBI and Pontis data
- SQL server and Microsoft Access support

You can find further information on this package at www.cartegraph.com/

For additional information on bridge inspection and sufficiency ratings, see Chapter 11, Engineering and Technology.

Sign Inventory Systems (SIMS)

An essential tool in managing signs is an inventory. It can effectively manage the public's investment in signage and help to ensure that the public benefits from a high-quality signing system. However, developing the inventory necessitates a significant investment of time and resources, requiring careful preplanning to provide the expected benefits. An agency can use the following seven-step process as a guide in developing a sign inventory (SIMS 1997):

Step 1: Involving Key Personnel

The success or failure of the inventory depends more on the communication between the personnel involved than on any other aspect. Individuals responsible for each area must

Core Data Elements (Signs)

<i>Data Element</i>	<i>Description</i>
Location	Variables such as route name, distance. Depends on the selected location reference system
Position	Location relative to the road (left, right, overhead, median)
Sign Code	Usually based on MUTCD. May be based on state or local specifications
Sign Condition	Assessment of daytime and night time quality
Maintenance Activity	Activity associated with a particular sign
Inspection/Maintenance Date	Date of last maintenance or inspection

Figure 10-1
Source: ITE, 1997, 169 & 170

actively participate in planning, developing, and implementing the inventory. Regardless of its size, the group should consult throughout the process to guide the inventory development and refinement.

Step 2: Selecting a Location Reference System

Establishing the location reference system provides the foundation on which the inventory is built. In many jurisdictions, one or more location reference systems may exist. The following are five location reference systems:

- Route/milepost/distance; signs are located by the distance from the nearest milepost.
- Route/milepost; signs are located at a milepost along a route.
- Link/node/distance; intersections are given node numbers and the roadway sections between the nodes are called links. Signs are located by a distance from the beginning of the link.
- Route/intersection/direction/distance; signs are tied to specific intersections and are located by their distance from the intersection in a particular cardinal direction.
- Latitude/longitude.

Step 3: Choosing Data Elements

When developing an inventory, the group should consider examples of types of data (See Figures 10-1, 10-2, and 10-3), which

Critical Data Elements (Signs)	
<i>Data Element</i>	<i>Description</i>
Installation Date	Date sign face installed
Sign Size	Width and height of the sign
Sheeting Type	Grade of retro reflective sheeting
Backing Type	Type of sign blank material
Post/Support Type	Type of sign support used. May include breakaway characteristics
Post/Support Condition	Assessment of the quality of the sign support
Sign Orientation	Cardinal direction in which the sign is facing
Traffic Speed	Speed limit on the roadway where sign is located.

Figure 10-2
Source: ITE, 1997, 169 & 170

have been divided into three groups based on importance—core, critical, and desirable. The core data elements form the infrastructure of the asset management database. (ITE, 1997, 169–170)

Step 4: Selecting Inventory Software

The many types of software packages available include:

- *Customized programs.* If a principal objective is to have a system that matches user needs, a customized sign inventory software application may be appropriate. This does allow the software to be tailored to the jurisdiction's needs, but it often comes at a significant cost. If the agency does not have experienced software development capabilities in-house, it can usually outsource on a contract basis.
- *Off-the-shelf software.* For users with limited budgets or those willing to be more flexible, off-the-shelf packages are available. A popular package is SIMS, developed by the Technology Transfer Center at the University of New Hampshire. For more information, contact the center:

Technology Transfer Center
University of New Hampshire
33 College Road, Kingsbury Hall
Durham, NH 03824-3591
603.862.2826

Desirable Data Elements (Signs)	
<i>Data Element</i>	<i>Description</i>
Offset	Distance from the edge of pavement
Height	Height of sign above the level of the road and edge of pavement
Inspector	Name or initials of the inspecting individual
Sign ID Number	A unique number identifying the sign
Images	Visual images, digital or hard copy. Link to video disk photo log
Comments	Supplementary notes about the sign and installation
Other Reference Numbers	Maintenance district, GIS location, plan or contract numbers, etc.

Figure 10-3
Source: ITE, 1997, 169 & 170

For additional fees, some vendors will make minor changes to customize software to better match the needs of a jurisdiction. Before selecting any software package, users should thoroughly investigate a variety of software packages, and then find the one that best meets their needs.

CarteGraph also offers a package called SIGNview. This software offers the following:

- Detailed inventory of signs and supports
- On-line MUTCD sign library
- Location identification
- Complete history log
- Queries and reports
- Attach images and videos
- User-defined data entry fields

You will find package and ordering information by visiting www.cartegraph.com/

Step 5: Preparing for Data Collection

This preparation is a two-part process; the first involves establishing definitions and conventions, and the second involves training. Some issues your team must address in part one include:

- Standardizing route names and numbers.
- Ramps and service roads. Larger jurisdictions with grade-separated interchanges will have signs on ramps, unnamed service roads, and rest areas. Your group must develop a naming convention for these road sections so personnel can properly locate the signs.
- Which signs to include. Will the inventory include just regulatory and warning signs, or also street name signs, parking signs, etc.?
- Who owns the sign. Often confusion can arise when signs are placed at route intersections that two jurisdictions maintain. The inventory administrator should determine if an agency policy exists, and if not, one should be defined.

The second part is training. Training should not only include the individuals who will be building the inventory but also those who will be maintaining the data. The inventory administrator may need to develop items such as data collections forms, instructions, and inspection guides.

Step 6: Initial Data Collection

Initial data collection to establish a sign inventory requires significant effort. Often the agency will collect for months or years. As a result, they must collect the data in a way that allows a subset of the inventory to become operational as quickly as possible. Three basic methods are available:

- *Manual field data collection.* One or more persons equipped with data entry forms and measurement tools collect the data—the most widely used method.
- *Microcomputer-based field data collection.* With this method, data can be entered in the field directly into the computer.
- *Photologs/videolog-assisted data collection.* Photologs consist of sequential images of the highway taken from an instrumented vehicle. Videologging is similar; however, continuous images of the roadway are taken instead of individual pictures at preset distances.

Step 7: Maintaining the Inventory

The inventory administrator must identify all installation and maintenance activities that affect the data elements selected and develop a process for ensuring that the inventory reflects these activities. Most importantly, time must be set aside to allow for regular data entry. If changes to the system are not entered in a timely manner, the inventory will become outdated and unreliable as a daily working tool.

Other Assets

Asset management reaches beyond pavement, bridges, and signs. An agency must account for its numerous other assets, including traffic signals, pavement markings, sewers, and parking meters. The data-gathering methods for such assets are similar to other assets. The agency must decide which aspects of each asset to involve in an initial inventory. Afterward, it inputs the data into a software package.

An agency can develop a custom package for any asset management system using Microsoft Access, designing the package to suit specific needs. However, if this is not feasible, CarteGraph offers a wide range of software packages to handle each of these assets.

CarteGraph Software

CarteGraph Systems, Inc., is the leading provider of asset management/GIS software solutions to the public works industry. The Windows-based modules of the CarteGraph Software Suite provide a complete set of management and analysis tools for more than 2,000 small towns, large cities, state governments, federal agencies, and private organizations worldwide (CarteGraph Systems 2000). CarteGraph offers the following packages:

LIGHTview

- Access to seven on-line libraries to aid in data entry
- Provides database for the entire light assembly (fixtures, arms, bases, poles, lamps, circuits and meters)
- Identify location by vicinity, coordinates, road network, or intersection

MARKINGview

- Identify location by vicinity, coordinates, road network, or intersection
- Calculate estimated costs of marking applications automatically
- Access on-line libraries
- SIGNALview
- Inventory faces, supports, detectors, controllers, and auxiliary equipment
- Identify locations
- Attach digital images and videos

SEWERview

- Identify network connectivity
- Keep on-line inspection records
- Associate video distress logs

WATERview

- Record detailed inventory
- Hold data for all components (hydrants, valves, mains, services, meters)
- Inspection data

Along with their integrated series of products, CarteGraph Systems offers a full range of supporting technical services, including technical support, training and data conversion. For more information on any CarteGraph software, contact the company or visit its website:

CarteGraph Systems, Inc.
3600 Digital Drive
Dubuque, Iowa 52003
800.688.2656
www.cartegraph.com

Questions and Answers About Asset Management

Q: What is the primary goal of asset management?

Answer: To maximize benefits for users while minimizing agency costs through collecting, maintaining, and analyzing asset data for an organization. The process combines engineering principles with economic theory to help create a framework for short-and long-range planning.

Q: What is GASB Statement 34?

Answer: In June 1999, GASB unanimously approved Statement No. 34: Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments. Among its many provisions, it requires that state and local governments report the value of their infrastructure assets, such as roads, bridges, tunnels, drainage systems, water and sewer facilities, dams, and lighting systems.

Q: What are the GASB 34's specific requirements for state and local governments?

Answers:

- State and local governments must include infrastructure inventories in the asset base reported in their annual financial statements.
- State and local governments may report infrastructure assets at historical cost or estimated historical cost.
- Following initial capitalization, state and local governments should either depreciate infrastructure assets or report them using a modified approach.

Q: Is it feasible to have one staff person in charge of an asset management system?

Answer: No. All levels within the organization must adopt and help to maintain the system if it is to be effective.

Q: How long might it take to do an initial inventory?

Answer: Years. The government agency must gather information in the field and convert it to an electronic format in the office. For the data to be useful, the "virtual inventory" must be kept up to date to match the state of

the "physical inventory," which is done on a continual basis. However, it is useful to start with a few data fields and add more over time, so the process does not become overwhelming.

Q: What assets should a government agency account for?

Answer: Signs, traffic signals, bridges, culverts, roads, pavement markings, lighting, storm sewers, sanitary sewers, water systems, guardrails, parking meters, construction equipment, parks and playground equipment, to name a few.

Q: What are the components of a successful asset management system?

Answer: Inventory management, work management and GIS management.

- Inventory management involves the organization of asset data in some format, whether a spreadsheet, a cabinet of files, or in a software package.
- Work management includes all the activities involved in maintaining assets at a predefined condition level.
- Linking a database and a GIS makes another level of management available by providing more options to analyze asset information. It can display asset symbols on a map with links to their corresponding database records.

Q: How detailed must an agency's database be?

Answer: It can be as detailed as you like. Many software packages allow you to enter many characteristics of each asset. If an in-house database is created using a package such as Microsoft Access, you can customize the system to your specific needs.

Q: I only have a few assets to account for and would like to create an in-house database rather than spend the money on costly software packages. How do I best get started?

Answer: A simple database in Microsoft Access can adequately manage an asset system. As long as you clearly define parameters and what asset characteristics you will track, it is simply a matter of creating the Access database. Tutorial materials for Access are available from Microsoft.

Q: How can asset management help in transportation investments and decision making?

Answer: Asset management recognizes the impact that the condition and performance of the transportation system has on the user and the impact of the user on the system. Analytical tools can facilitate the agency's decision-making process by providing the ability to determine the impact of choosing one alternative over another. Engineering economic analysis provides the tools to prioritize investment options, according to relative economic efficiency levels.

Statutes

IC 8-17-8-1

Sec. 1. (a) The plan commission having jurisdiction over the unincorporated area of the county, or if the unincorporated area of the county is not subject to the jurisdiction of a plan commission, the county executive, may authorize the preparation of maps depicting the county roads either by name or number.

(b) The county executive may authorize the purchase and installation of signs showing the number or name of the county road as depicted on the maps.

(Formerly: Acts 1953, c.28, s.1.)

As amended by P.L.86-1988, SEC.135; P.L.119-1989, SEC.1.

IC 8-17-8-2

Sec. 2. (a) The plan commission or county executive shall direct the county engineer or may request the county surveyor to prepare the maps. The county surveyor or the county engineer may be compensated in addition to the salary the surveyor or engineer receives for preparation of the maps, in an amount to be determined by the plan commission or the county executive, subject to the approval of the county fiscal body.

(b) All expenses incidental to the preparation of the maps, including the county surveyor's and county engineer's compensation, shall be paid out of the county general fund.

(Formerly: Acts 1953, c.28, s.2.)

As amended by P.L.86-1988, SEC.136; P.L.3-1989, SEC.66; P.L.276-2001, SEC.3.

IC 8-17-8-3

Sec. 3. The maps shall be available to all units of government free of charge. The maps shall be available to the general public at a charge to be determined by the county plan commission or county executive. Money received from the sale of the maps shall be deposited in the county general fund.

(Formerly: Acts 1953, c.28, s.3.)

As amended by P.L.86-1988, SEC.137; P.L.3-1989, SEC.67.

IC 8-23-15-1

Sec. 1. The department shall periodically inventory the mileage and use of the local road systems under the jurisdiction of the counties and the street systems under the jurisdiction of municipalities.

As added by P.L.18-1990, SEC.224.

IC 8-23-15-2

Sec. 2. In undertaking the inventory under this chapter, the department shall give written notice to the county road supervisor and the county executive

thirty (30) days before the inventory actually begins that an inventory is underway. The department shall confer with the local officials to confirm the accuracy of the inventory. If the county executive believes an error has been made, the executive may appeal to the commissioner for a review of the inventory results.

As added by P.L.18-1990, SEC.224.

IC 8-23-15-3

Sec. 3. For the purpose of the inventory under this chapter, the department shall include in each county's total mileage those roads making up that county's southern and eastern boundaries. If a county is responsible for roads on a state line as the result of an interagency agreement, those roads shall be included in the inventory.

As added by P.L.18-1990, SEC.224.

IC 8-23-15-4

Sec. 4. The department shall use the inventory developed under this chapter in its annual certification of county road mileage.

As added by P.L.18-1990, SEC.224.

IC 36-9-6-1

Application of chapter

Sec. 1. This chapter applies to second and third class cities.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.44, SEC.59.

IC 36-9-6-2

Supervision of streets, alleys, and city property

Sec. 2. Unless otherwise provided by statute or ordinance, the works board shall supervise the streets, alleys, sewers, public grounds, and other property of the city, and shall keep them in repair and good condition. The works board shall provide for the cleaning of city streets and alleys.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.43.

IC 36-9-6-3

Custody, maintenance, improvement, and construction of city property

Sec. 3. (a) Unless otherwise provided by statute or ordinance, the works board has custody of and may maintain all real and personal property of the city.

(b) A city works board may design, order, contract for, and execute:

(1) all work required to improve or repair any real or personal property that belongs to or is used by the city; and

(2) the erection of all buildings and other structures needed for any public purpose.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.44.

IC 36-9-6-7

Streets, alleys, wharves, and public places; improvements and repairs

Sec. 7. The works board may design, order, contract for, and execute all work required to improve or repair any street, alley, wharf, or public place within the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-8

Public places; cleaning and sprinkling

Sec. 8. The works board may, by contract or otherwise, clean and sprinkle any public place within the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-9

Streets, alleys, and public places; lighting

Sec. 9. The works board may erect lampposts or other lighting apparatus in the streets, alleys, and public places of the city.

As added by Acts 1981, P.L.309, SEC.79.



Even the lowly culvert is magnificent when we consider what it does. This file photo indicates that this particular culvert may be relatively new, well maintained and very functional. A small structure for a big job. (IN-LTAP file photo)



Engineering and Technology

Introduction

There are many engineering and technology challenges maintaining roads and streets. Issues involving bridges, design and specifications, inspection, drainage, signage, construction, snow and ice removal, and dust control are only some of them. This chapter is a general review of a number of technical considerations and issues.

Environmental issues have become more important and include erosion and dust control, reducing pollution, and snow and ice removal. Water quality and wetland permits are now familiar components of planning and engineering any road and street project. Construction engineering inspection issues generated by using consultants are also part of operating in the modern environment. Materials issues include unique problems encountered in maintaining concrete and asphalt surfaces. The chapter ends with a discussion of technological information sources, followed by questions and answers. The master bibliography and a list of statutes contain the references used in the chapter. Additional resources are available from the Indiana LTAP library, APWA, AASHTO, NACE and the professional associations.

Environmental Issues

Dust Control

Many counties receive road dust complaints every year. A well-defined procedure for handling requests for dust control can minimize the burden of the highway department staff. Following are some guidelines for establishing a dust control policy, as well as information about the various methods of dust control.

One of the most important things local public agency road and street officials can do is develop a reasonable written snow and ice control policy, and to adhere to its terms. Use a participatory process, if possible. The level of service is important. Define effort, sequence and priority along with and type of treatment at various locations for particular storm types. If followed closely, the risk from snow and ice situations can be reduced. (File Photo)

Procedure for establishing a dust control policy.

Local agencies must first evaluate whether to offer this service. If local contractors are available to provide the service at a reasonable cost, the private sector approach may be the best alternative. Unfortunately, in many rural areas there are no contractors willing or able to provide the needed services. If the county decides to provide the service, it should adopt a standard policy in writing and make that policy available to residents to be sure everyone understands it clearly. Since it is easier to do all dust control applications at one time, residents should be given a request form, along with a deadline date for submitting the completed form. Figure 11-1 is a sample dust control application form.

Dust Control Application	
Name:	_____
Address:	_____
City:	_____, Indiana Zip: _____
Phone:	_____
County Road:	_____ Township: _____
Directions to residence:	_____
Special Instructions:	_____
Length of Shot:	_____ First Time _____ or Repeat Application _____
If a repeat application, does the existing section need patched? _____	
Cost:	_____ ft x _____ \$/ft = _____ \$ < Check Number: _____ >
My signature below indicates that I have read and agree to the terms and conditions of the Dust Control Policy outlined on the front side of this application form.	
Signature:	_____ Date: _____
FOR OFFICE USE ONLY:	
Application Number:	_____ Map Location: _____
Date Shot:	_____ by _____ Product: _____
Length:	_____ x Width: _____ gal

Figure 11-1 Dust Control Application

Establishing a fee. The fee depends on the product used or type of application offered. To keep the residents' cost as low as possible, most counties base the fee on the cost of materials

and do not include labor or equipment expenses. It is best to keep the pricing method as simple as possible, such as cost per foot of road treated. The written policy should require that payment be made in advance. The county should state specifically what they are going to do and what is expected of the residents. Normally, it is each resident's responsibility to maintain a specific section. With a clearly defined written policy, there should be no confusion about expectations.

Methods of treatment. Following are various methods of treatment, along with the advantages and disadvantages of each.

- Water. It poses no threat to the environment and is readily available; however, it evaporates quickly and in some cases is effective only for a few hours.
- Chlorides (magnesium and calcium chloride). Chlorides are widely used, retard evaporation of moisture from the roadway, and are easily applied. Unfortunately, they may leach from the roadway during heavy rains and are not recommended for gravel with less than 15 – 20 percent fines.
- Oils and resinous adhesives. These materials bind the soils because of their adhesive properties and they serve to waterproof the road. Under dry conditions, however, they can form a non-flexible crust that results in potholes. They also require strict quality control to ensure uniform mixing, and their application rate is very specific to the type of roadway material.
- Lignin derivatives. These greatly increase the dry strength of soils. During rainfall they disperse clay which reduces water penetration, and they remain slightly plastic which permits reshaping of the roadway if necessary. Their performance, however, depends on well-graded roadway material with silt and clay content from 4 – 8 percent. Also, they may cause corrosion of aluminum and its alloys; they become slippery when wet and are somewhat brittle when dry.

Snow and Ice Control

Local road and street agencies should establish written policies and guidelines specifying the intent, capabilities, and procedures of their snow and ice control program. An effective snow and ice control program should include:

- A vision of the goals and expectations.
- Priorities for snow and ice control resource allocations.
- Fiscal accountability to the users/stakeholders/providers of funds.
- Legal responsibilities and constraints.
- Protection of the environment through wise use of chemicals.

- Educating the public to ensure understanding of the capabilities and limitations of snow and ice control.
- Willingness to improve operations through change and innovation.

Policies for snow and ice control. One of the most important things a political entity can do is have a reasonable written snow and ice control policy and adhere to its terms. Developing the policy should be a participatory process, and the policy should be reviewed and updated annually, at minimum.

The most important policy issue is the level of service. Here the policy makers have to balance cost, environmental impacts and safety, both of travelers and of the snow and ice control operation crews. If the policy is reasonable and the agency follows it as closely as possible, there will be very little successful litigation involving slippery roads or facilities. The most common method to define level of service is to define the level of effort and/or the sequence, priority, and type of treatment at various locations for particular storm types.

When deciding on treatment priorities, the policy makers should consider several options:

- Traffic volume.
- Functional classification of the street or highway.
- Plan and profile characteristics.
- Known problem areas.
- School bus routes and schedules.
- Transit routes.
- Medical, police and fire facilities.
- Major sources of traffic at various points in time.
- Storm history and storm type.

The policy must be flexible to allow for changing conditions and higher priorities.

Equipment used in snow and ice control. Trucks, plows, material spreaders, wheel loaders, motor graders, snow blowers or rotary plows, sweepers and melters are the most common equipment. Each agency can determine which types are appropriate for its needs.

Equipment maintenance programs are necessary for snow and ice control programs to be effective. Agencies should be sure to perform pre-season equipment inspection early enough so there is time to make repairs before the first snow event. Operator training is also an important component of this preparation.

After each storm, equipment must be cleaned and lubricated. A complete equipment inspection should be made at this time to ensure readiness for the next event.

Using chemicals. Anti-icing and deicing are two distinctly different snow and ice control strategies. Anti-icing prevents snow and ice from bonding with the pavement. In contrast, deicing *destroys* an existing bond between snow and ice and the pavement. Anti-icing requires about one-fifth the amount of chemical to prevent a bond from forming, compared to the amount required to destroy an existing bond.

The five most common chemicals used for anti-icing and deicing are sodium chloride, calcium chloride, magnesium chloride, calcium magnesium acetate (CMA) and potassium acetate (KA). Sodium chloride (salt) is widely used because of its effectiveness at moderate subfreezing temperatures, its relative low cost, availability, and ease of application in the solid form with current spreader equipment.

Chemical storage. Storing rock salt improperly can cause environmental problems, especially if it is kept uncovered. Precautions such as runoff ditches and tarpaulin covers are necessary to protect outdoor salt piles and minimize runoff. Outdoor storage should be kept to a minimum because proper recovering is difficult once a temporary cover has been disturbed for salt removal.

AASHTO offers a "Guide for Snow and Ice Control" that addresses many of the issues covered in this section, as well as many other related topics. Contact the American Association of State Highway and Transportation Officials (www.aashto.org) for more information or to order this guide.

The Fall 2003 edition of the Indiana LTAP Pothole Gazette contains information on winter salt truck wash water proposal. The described technology provides for a means to recycle truck salt wash water rather than creating a further hazard. (Pothole Gazette, Fall 2003, 1 and 4)

The Permit Process

Permit Types

There are many types of permits. The following describes the main ones with which we need to be concerned:

Air pollution

- Permits for construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the air. (IC 13-15-1-1)

Water pollution

- Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.
- Permits for construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned treatment works. (IC 13-15-1-2)

Solid waste management

- Permits to control or limit disposal of any contaminants onto or into the land.
 - Permits for construction, installation, or modification of facilities, equipment, or devices:
 - (A) to control or limit any discharge, emission, or disposal of contaminants into the land
 - (B) for storage, treatment, processing, transferring, or disposal of solid waste or hazardous waste.
- (IC 13-15-1-3)

Notice to Adjoining Property Owners

Whenever a permit is required for development in a particular area, proper notice must be given to owners of the adjoining property. The person who submits the permit application shall make a reasonable effort to provide notice to:

- All owners of land adjoining the land that is the subject of the permit application.
- All occupants of the land adjoining the land that is the subject of the permit application.

This must be done no more than ten (10) working days after submitting an application for a permit issued under IC 13-15-1. (IC 13-15-8-2)

The notice to adjoining property owners must:

- Be in writing.
- Include the date on which the application for the permit was submitted to the department.
- Include a brief description of the subject of the application.

(IC 13-15-8-3)

Water Quality

Anyone who disturbs the soil during construction may be required to obtain a storm water runoff permit from the IDEM Office of Water Quality.

(327 IAC 15-5 [Rule 5]) The requirements of Rule 5 apply to anyone involved in construction activity (which includes clearing, grading, excavating and other land-disturbing activities) that results in the disturbance of five acres or more of total land area. If the land-disturbing activity affects less than five acres of total land area but is part of a larger common plan of development or sale (such as a subdivision or industrial park), it is still subject to storm water permit requirements.

Rule 5 requirements include (but are not limited to):

- Filing an Erosion Control Plan with the local county Soil and Water Conservation District (SWCD).

- Filing a Notice of Intent (NOI) with IDEM prior to beginning any work. The NOI should describe the project, show the number of acres involved, and provide an estimated time table for land-disturbing activities.
- Publishing a public notice of the planned construction activity in a local newspaper of general circulation, and sending a copy of that notice to IDEM along with the NOI.
- Ensuring that those persons responsible for installing and maintaining the erosion control measures have been trained in erosion control practices.
- A \$100 application fee with the NOI.
- Meeting the requirements outlined in the permit, including erecting and maintaining erosion control fences to prevent soil erosion.

Wetlands

Any person who wishes to place fill materials, excavate or dredge, or mechanically clear (using heavy equipment) within a wetland, lake, river, or stream must first apply to the Corps of Engineers for a Section 404 permit. If the Corps of Engineers decides a Section 404 permit is needed, then a Section 401 Water Quality Certification from IDEM is also required. The legal definition of "wetlands," found in 33 Code of Federal Regulation 323.2(c) and used by the U.S. Army Corps of Engineers (USACE) for determining jurisdiction for issuing dredge and fill permits required for compliance with Section 404 of the Clean Water Act is: "The term 'wetlands' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

For the purposes of water quality certifications, the U.S. Army Corps of Engineers (USACE) must determine if an area is a jurisdictional wetland or other water in order to determine if a USACE 404 permit and IDEM-issued 401 Water Quality Certification is needed.

Some steps to obtain an IDEM 401 Water Quality Certification include (but are not limited to):

- First, apply to the Corps of Engineers to determine if the activity requires a Section 404 permit and a water quality certification.
- If the activity requires a permit from USACE, then it is necessary to complete and submit an application to IDEM. No fees are required to apply for certification.
- IDEM recommends submitting all applications at least six months in advance.
- Anyone who proposes to impact wetlands will be required to submit wetland delineation in accordance with the Corps of Engineers 1987 Wetland Delineation Manual.

Water and Sewer Main Extensions

IDEM-issued Wastewater Facility Construction Permits are required before building sewer main extensions, but only if the construction does not otherwise have the approval of a local publicly-owned sewer authority (Under 327 IAC 3-2.1-3[WP File - see article 3]). See IDEM Permit Guide; URL: <http://www.in.gov/idem/guides/permit/water/wwconstructionpermits.html>

The applicant can gain local approval by submitting to the local wastewater treatment authority plans that meet all state water pollution control rules and are prepared by a professional engineer. The local authority is responsible for reviewing the plans and notifying IDEM of approved projects.

Activities that do not require a Wastewater Facilities Construction Permit are: modifications to repair, replace, or add equipment at existing municipal or industrial water pollution control/wastewater treatment facilities, but that are not associated with treating new types of influent pollutants or with increasing capacity of the facility. In addition, under 327 Indiana Administrative Code (IAC) 3-2-4(1-7) WP File - see article 3), a wastewater construction permit is not required for construction of:

- Storm sewers transporting only surface run-off.
- Single-family dwelling connections to existing sanitary sewers.
- Sewers which connect multi-unit residential, commercial or industrial buildings that do not discharge toxic substances or pollutants incompatible with the system, or that are incapable of being treated to an acceptable quality.

The things an applicant must do to comply with the requirements of IDEM's Wastewater Facilities Construction Permit program include (but are not limited to):

- Submit a complete application with a set of construction plans (non-industrial projects must be stamped and signed on each page by a professional engineer) 90 days (or at least 60 days prior to the start of construction).
- Provide information about notification of affected persons, or potentially impacted parties (adjacent landowners, or those with proprietary or expressed interest).
- List the receiving stream, or if discharging to a publicly-owned treatment works.
- If constructing an industrial pretreatment facility, provide a capacity/acceptance letter from the receiving POTW certifying that the proposed project is not expected to cause overloading or bypassing in the collection system from locations other than NPDES-authorized discharge points, and that there is sufficient capacity in the treatment plant to adequately treat the flow.
- Enclose application fees, if required. (There is no charge for sewer projects, while fees for industrial wastewater treatment or pretreatment facilities range from \$250 to \$2,500.)

Construction Wastes

Uncontaminated rocks, bricks, concrete, road demolition debris and dirt are not subject to solid waste regulations (see 329 IAC 10-3-1 - WP File - see article 10), and therefore do not have to be disposed of in a landfill. Such debris may be left or buried on the construction site or may be used off site as fill, as long as it is not placed in a wetland or floodway. No other types of demolition debris may be buried or left on the site.

New construction, especially on previously undeveloped land, can generate leaf, brush, and woody wastes from land clearing which, under Indiana Code, **IC 13-20-9** are banned from disposal at solid waste landfills. It is an option to bury any vegetative wastes, such as leaves, twigs, branches, limbs, tree trunks and stumps on site. However, because of the potential for future ground subsidence where large quantities of such material have been buried, the IDEM Office of Land Quality recommends considering one of these options:

- Vegetative and naturally-occurring woody wastes can be taken to a registered yard waste composting facility. Vegetative and chipped, ground or shredded woody wastes could be composted on site, although registration is required if more than 2000 pounds is to be composted. The finished compost can then be used on site as a mulch, or worked into the soil as an amendment.
- Although open burning is not generally an allowable or safe alternative (see 326 IAC Article 4 - WP File, Burning Regulations and the criteria for open burning variances), it may be possible to burn the woody vegetation on site using an air curtain destructor, provided prior approval is obtained from the IDEM Office of Air Quality. Builders should keep in mind that state rules allowing private residential burning do not apply to open burning of construction debris on residential building sites. Open burning of waste generated on a regular basis as part of routine business operations is prohibited.

Indiana Department of Natural Resources (DNR)

The following is a list of DNR Acts that require certain permits from the DNR.

- Lake Preservation Act states that no person may change the level of the water or shoreline of a public freshwater lake by excavating, filling in, or otherwise causing a change in the area or depth or affecting the natural resources, scenic beauty, or contour of the lake below the waterline or shoreline, without first securing the written approval of the Department of Natural Resources. A written permit from the Department is also required for construction of marinas, new seawalls, seawall re-facing, underwater beaches, boat wells, boat well fills, fish attractors, and any permanent structures within the waterline or shoreline of a public freshwater lake. The Act further states that a non-refundable \$25 fee must accompany each permit application. (**IC 14-26-2**)

- Lowering of the Ten Acre Lake Act, also known as the "Ditch" Act, states that no person may order or recommend the location, establishment, construction, reconstruction, repair, or re-cleaning any ditch or drain with a bottom depth lower than the normal water level of a freshwater lake of 10 acres or more, and within 1/2 mile of the lake, without first having written approval from the Department of Natural Resources. The Act further states that a non-refundable \$25 fee must accompany each permit application. (**IC 14-26-5**)
- Flood Control Act requires that any person proposing to construct a structure, place fill, or excavate material within the floodway of any river or stream must obtain written approval from the Department of Natural Resources before initiating the activity. The Act further states that a non-refundable \$50 fee must accompany each permit application. (**IC 14-28-1**)
- Navigable Waterways Act requires that prior written approval be obtained from the Department of Natural Resources for placing, filling, or erecting a permanent structure in, water withdrawal from, or mineral extraction from, a navigable waterway or Lake Michigan. There is no fee for this permit. (**IC 14-29-1**)
- Sand and Gravel Permits Act requires that prior written approval be obtained from the Department of Natural Resources to remove sand, gravel, stone, or other mineral or substance from or under the bed of a navigable waterway. A non-refundable \$50 fee must accompany each permit application. (**IC 14-29-3**)
- Construction of Channels Act requires that prior written approval be obtained from the Department of Natural Resources for construction of an artificial, or the improved channel of a natural, watercourse connecting to any river or stream for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities. A non-refundable \$100 fee must accompany each permit application. (**IC 14-29-4**)

Endangered Species

Under the Endangered Species Act, the United States Fish and Wildlife Service (USFWS) must determine whether or not a project will adversely affect a threatened or endangered species. For any drainage improvement project that will also be reviewed by the COE, a separate permit from the USFWS is not required. COE will initiate and coordinate USFWS review of the project. If a project will not involve COE review, either for an Individual or General Permit, contact the USFWS to determine if a separate Take Permit is required. The term "take" is generally

defined to include almost any act adversely affecting a species, including harassing, harming, pursuing, hunting, capturing, or collecting a listed animal.

Using Consultants for Construction Engineering and Inspection

Agencies have the option to use consultants for construction engineering and inspection (CEI). This section compares the advantages and disadvantages of hiring a consultant to doing the work in-house, along with the cost considerations for both options. Note that this discussion is also linked to the procurement discussion in Chapter 4. In that more general discussion, the process of Quality Based Selection is explained in some detail.

Advantages of Using Consultants

A major advantage of using consultants is that it allows the agency to handle peak workloads without adding staff that would have to be laid off when the workload is reduced. Another advantage is the ability to obtain the services of experts, particularly for unusual projects undertaken infrequently such as large or unique bridge projects and tunnel construction. Consultants may have better qualified inspectors and technicians and be able to staff up more easily to provide manpower for peak workloads.

Note, too, that the project designer does not always have to perform the inspection. It is sometimes useful to hire an outside consultant instead. A neutral third-party inspector offers a non-biased inspection. If a consultant's own inspector found a mistake, the inspector may be willing to "let it slide" to protect the reputation of the firm.

Disadvantages of Using Consultants

The major disadvantage is increased cost. In addition to their fees, using consultants adds an additional level of management in project administration, increasing the total construction engineering cost. Also, many consultant personnel are not familiar with agency methods, procedures and requirements. This is especially true for consulting firms on first assignments for the agency.

The Consultant Selection Process

There are several important objectives in developing an effective consultant selection process:

- Participation by a sufficient number of qualified consultants to ensure the agency's ability to secure a truly qualified firm.
- Maintaining fair competition among available firms being considered.
- Involving stakeholders whose satisfaction with the selection process and with the selected consultant's work

is vital to final success. (Some of these may be impractical to reach and involve as individuals, such as motorists who use a highway.)

- Formulating and administering policies and procedures to ensure fair, thorough, and objective comparison of agency needs and goals with the capabilities, concepts, time frames, and other relevant capabilities offered by each firm under consideration.
- Flexible selection procedures to keep the degree of agency and consultant effort in reasonable proportion to the magnitude of the work.

Many consultant selection processes begin with issuing a "Request for Qualifications" (RFQ) or "Request for Proposals" (RFP). These are two different things, and they are:

- **Request for Qualifications.** A Request for Qualifications is normally used to ascertain the general qualifications of consultants, or some particular qualifications in a selected area of expertise. They are frequently used to develop a data bank of interested and qualified consultants. An agency may want to solicit RFQs annually to ensure up-to-date information to use throughout the year. (See Chapter 4 for QBS process information.)
- **Requests for Proposal.** Requests for Proposal tend to be used in conjunction with specific projects or studies and contain details such as the scope of services desired, project descriptions, and budget allocations. The more specific the information, the better the responses will be. RFPs should describe factors that will be used to determine the most highly qualified firm and should also include a selection schedule.

Policies on Consultant Selection

Consultant selection can be politically or ethically sensitive. Adopting a written policy protects both staff and the agency. Selection policies can include a wide variety of steps and criteria, but most good policies do these things:

- Establish selection qualifications.
- Specify criteria by which qualifications will be judged.
- Provide for effectively publicizing the availability of the work.
- Correlate the number of consultants to be interviewed with the sizes and kinds of projects or other services the agency expects.
- State the procedures for screening proposals.
- Require that a comprehensive agreed-upon scope of services be the basis for consultant compensation and a final contract.
- Identify departmental responsibility for administering the process.

- Specify who is to make recommendations and who is to make the final decisions.
- Assign responsibility for contract negotiations with the selected consultant and state whether the contract is: 1) to be executed by a designated official; or 2) presented to the governing body for final decision. In the latter case, negotiation with another candidate firm should occur only in the event the first contract is disapproved.

Refer to the APWA publication, "Selection and Use of Engineers, Architects and Professional Consultants, Guidelines for Public Agencies" for further, more in-depth coverage of this topic. Chapter 4 of this manual contains more information on the procurement and purchasing process and procedures.

Local Authority in The Consultant Selection Process

When professional services are required, a public agency may:

- Publish notice in accordance with **IC 5-3-1**.
- Provide for notice other than notice in accordance with **IC 5-3-1** as it determines is reasonably calculated to inform those performing professional services of a proposed project.
- Provide for notice in accordance with both of the above.
- Determine not to provide any notice.

If the public agency does decide to provide notice, each notice must include:

- The project location.
- A general description of the project.
- The general criteria to be used in selecting professional services firms.
- The place where additional project description or specifications are on file.
- The public agency's hours of business.
- The last date statements of qualifications from interested parties will be accepted.
(**IC 5-16-11.1-4**)

A public agency may make all contracts for professional services on the basis of competence and qualifications for the type of services to be performed and negotiate compensation that the public agency determines to be reasonable. (**IC 5-16-11.1-5**)

Roadway Maintenance

There are two types of maintenance, routine and preventive. The most suitable procedure must be selected to get the desired results; however, often methods that apply to preventive maintenance may also take care of routine maintenance and vice versa.

Routine maintenance involves patching surface holes, repairing edge failures, smoothing depressions and ruts, and other procedures that repair an undesirable surface condition. Preventive maintenance takes place before street deterioration is obvious. Replacing oxidized bitumen in asphalt concrete pavements by surface treatments, fog coats, or slurry seal are preventive when done before major deterioration sets in.

Asphalt Pavement Maintenance

There are many types of distress that can arise for asphalt pavements. This section will identify the common problems and discuss the methods to treat and prevent them.

There are several forms of pavement cracking and repair techniques and they vary from filling cracks to complete removal of the problem area. Some of the forms of cracks that occur most often are surface (alligator) cracks, edge cracks, and lane joint cracks.

Alligator or fatigue cracking. This condition is characterized by cracks that join together and form polygons. After repeated loading, the failed area develops a pattern that resembles alligator skin. The affected areas are usually small, but when no corrective action is taken and the problem continues for some time, the failed area may then grow to extend over an entire section of pavement. Because alligator cracking results from subgrade or base failure, the only permanent method of repair is to remove the failed material and rebuild the subgrade, base and surface. Applying an asphalt surface treatment or crack filler may repair low and medium severity cracks temporarily.

Edge cracks. These are longitudinal cracks about one foot from the edge of the pavement. Transverse cracks toward the shoulder sometimes accompany the longitudinal cracks. Edge cracks 0.25 inches or less in width should be sealed with a sand asphalt seal because they are too small to permit individual sealing. For medium severity edge cracking, sealing the pavement surface is not sufficient; the depressions caused by settlement must also be leveled. Very severe edge cracks are usually the result of base and/or subgrade failure, and the problem requires completely removing and replacing the failed material.

Lane joint cracks. These are longitudinal separations along the joint between two lanes of pavement, or at the joint between pavement widening and the old pavement. They usually result from cold joints that were improperly prepared during paving. Low severity lane joint cracks are too narrow to be sealed with an asphalt crack sealer material, so no maintenance is required. Medium severity lane joint cracks are filled with an approved hot-applied asphalt crack sealer material meeting the requirements of the General Specifications in force for the particular jurisdiction. The cracks first should be cleaned, and then filled. High severity lane joint cracks are sealed with approved emulsion slurry, using a hand broom and hand squeegee to direct the material into the crack. If a crack is wider than two inches, an approved sand-asphalt premixed patch material is used.

Pavement sealing. Early detection and repair of cracks is a very important part of maintenance operations. Small cracks and surface breaks which are almost unnoticeable may develop into serious defects if not repaired. Therefore, frequent inspections of the pavement are required. Asphalt surface repair techniques are economical, easy to place, and long-lasting. Sealing out moisture and air prolongs the useful life of a base or surface. Techniques range from a single light asphalt application, to multiple asphalt overlays. All of these seal the surface, and each has one or more maintenance uses. Several types of seals are available.

- Fog seals are very light applications of diluted, slow-setting asphalt emulsion which reduce the entrance of air and water into the pavement.
- Sand seal is a spray application of rapid-setting asphalt emulsion, followed with a light covering of clean angular sand. It is used to restore a dry, weathered or oxidized surface and helps prevent loss of material due to traffic wear.
- Slurry seal is a mixture of well-graded fine aggregate, mineral filler and slow-setting asphalt emulsion. It will seal surface cracks, stop raveling, seal open surfaces and improve skid resistance.

Concrete Pavement Maintenance

This section deals with some common problems encountered with concrete pavements and how to correct those problems.

Sealing cracks. Sealing should be considered only for cracks that are open wide enough to permit entry of joint sealant or a mechanical routing tool. Widening a tightly closed crack is difficult and may result in a maintenance problem where none existed before. Liquid field-molded sealants specified for new construction are generally suitable for resealing joints and cracks.

Subsealing. This is a nondestructive technique that fills voids under the pavement without raising the slab, displaces pockets of free water that contribute to pumping and erosion, and reduces the cracking and faulting that result from poor drainage and non-uniform slab support. It is normally done after slab replacement and full-depth patching. Partial-depth patching, when needed, should be done after subsealing has been completed.

Slabjacking. This technique is used to raise concrete pavement slabs. It must be done with care, but when done correctly can be more economical than slab replacement. It is usually completed in less time, with minimum traffic interference, and it restores the structural integrity of the original pavement.

In slabjacking, an arrangement of stringlines and blocks is generally used to determine when the desired elevation has been reached. The stringline is usually positioned about one inch above the desired grade. Gage blocks placed on the slab

indicate lifting progress. As the blocks approach the stringline, the rate of lifting slows and pumping is stopped completely when the blocks touch the line.

Patching. Either a partial-depth or full-depth patch may be desirable to repair spalls at joints and/or cracks. Spalls that extend deeper than one-half the slab thickness cannot be partial-depth patched effectively and a full-depth patch should be used. Partial-depth patches have performed well on some projects and not as well on others. Failures are caused by lack of a good bond, compression failures, or variability of the patch material. The type of patch material that should be used will depend upon such factors as the amount of time between patching and opening the area to traffic, temperature, cost, size and depth of patches.

Full-depth patching is required where deterioration is so great that complete replacement or removal of the pavement to correct a subgrade problem is needed. This type of repair may be necessary for problems such as blowups, divided slabs, large patches and spalling.

For a detailed explanation of the techniques discussed in this section, as well as for additional topics in pavement maintenance, refer to the APWA publication, *Street & Highway Maintenance Manual*, copyright 1985.

Bridges

The Indiana code defines a "bridge" as: "Any structure designed to carry vehicular traffic over or under an obstacle to the normal flow of traffic and including any grade separation, culvert, or approach to a bridge." An "approach" is defined as: "Any part of a road or street that is required to make a bridge a viable part of a county road or city street system but which does not extend more than five hundred feet from the bridge." (IC 8-16-3-1.5)

Bridge Inspections

INDOT requires that the engineer in charge of the bridge inventory project is a registered professional engineer, and the county inspection report must include his or her signature and seal. Personnel who perform bridge inspections must meet the qualifications and requirements established in 23 CFR Part 650, Subpart C – National Bridge Inspection Standards, Subsection 650.303(b) Inspection Procedures and Subsection 650.307 Qualifications of Personnel.

Routine bridge inspections. These are regularly scheduled biennial inspections that entail sufficient observations and measurements to determine the physical and functional condition of the bridge. Their purpose is to identify any developing problems and changes from previously recorded conditions and to ensure that the structure continues to satisfy present service requirements. These inspections are generally conducted from the deck, ground and water levels. Special equipment, such as ladders, lifts and rigging or staging is

necessary for routine inspections in certain circumstances. Each bridge must have a routine inspection by personnel qualified in accordance with the NBIS at intervals not to exceed 24 months.

Fracture-critical and special detail inspections.

These inspections are required at intervals not to exceed 24 months and should be conducted as part of the biennial inspection. Fracture-critical members are tension members within non-redundant structures whose failure would be expected to result in the collapse of all or part of a bridge superstructure. This type of inspection must be conducted on:

- Truss bridges
- Two- or three-girder bridges

A special detail inspection is required for bridges with unique details including:

- Hangers
- Hinge or pin connections and pins at eye bars
- Steel pier caps
- Steel box girders
- Concrete segmental or post-tensioned concrete box girders
- Cantilevered bearings
- Other details such as cover plates, open spandrel arches, out-of-plane bending details, category D, E, E' fatigue prone details
- Scour countermeasures

The majority of bridges with these components can be checked during the routine inspections.

Underwater bridge inspections. This involves inspecting substructure units that are submerged and cannot be inspected visually due to water depth or turbidity. Other conditions that may require underwater inspections include locations where current velocity is too great, the water is too polluted or the channel bottom is too soft for inspectors to safely examine substructure elements with conventional waders or boots.

Underwater inspections are required at intervals not to exceed 60 months. In most cases, a special team of underwater divers must complete these inspections.

Bridge Sufficiency Ratings

The sufficiency rating represents a composite rating weighted to assess the following qualities of the bridge:

- Structural adequacy and safety
- Serviceability and functional obsolescence
- How essential it is for public use

The sufficiency ratings vary from 0 to 100, with a lower value indicating a lower degree of sufficiency, but a higher degree of need for either replacement or repair.

To be eligible for federal aid funding, a bridge must be both deficient and have a sufficiency rating between 0 and 49.99 for replacement, or between 50 and 79.99 for rehabilitation. The term "deficient" indicates that a bridge is either structurally deficient or functionally obsolete.

A bridge that is restricted to light vehicles only, is closed, or requires immediate rehabilitation to remain open due to deterioration of structural components is classified as structurally deficient. According to the FHWA, a restricted-use, structurally deficient bridge is not necessarily unsafe; strict observance of the posted allowable traffic load and vehicle speed will generally provide adequate safeguards for those using the bridge.

A bridge is classified as functionally obsolete when the deck geometry, load-carrying capacity, clearance or approach roadway alignment no longer meet criteria for the system of which it is an integral part. According to the FHWA, a functionally obsolete bridge is not unsafe for all vehicles; however, it has older design features which prevent it from accommodating current traffic volumes and modern vehicle sizes and weights.

Engineering Plans

It is important that all engineering work done by the agency be properly prepared, approved, and sealed by a professional engineer. Even minor jobs must have the proper plans and approvals. Any public agency or other political subdivision of the State of Indiana may not engage in construction or maintenance of any public work involving the practice of engineering without plans, specifications, and estimates prepared, certified, and sealed by a professional engineer.

In addition, any official of an agency charged with enforcing any law, ordinance, or rule that relates to the design, construction, or alteration of buildings or structures may not approve any plans or specifications that have not been prepared by, or under the supervision of and certified by, a registered professional engineer.

The only exceptions are:

- Plans or specifications prepared by, or under the supervision of and certified by, an architect who is registered under **IC 25-4-1**.
- Structures and construction listed in **IC 22-15-3-3(a)**.
- Plans or specifications contained in a registration, license, or permit application specified in **IC 25-31-1-19**

All maps showing the underground workings of any mine in Indiana must be prepared, certified, and sealed by a professional engineer or land surveyor as well.

(**IC 25-31-1-19**)

Registration is not required to practice engineering by an individual or a business for the following:

- On property owned or leased by that individual or business, unless the engineering practice involves the public health or safety, or the health or safety of the employees of that individual or business.
- For engineering performance which relates solely to the design or fabrication of manufactured products.
- An individual registered as a landscape architect under **IC 25-4-2** and while the individual or business is engaged in the practice of landscape architecture, planning land or water use.

(IC 25-31-1-20)

It is the duty of all law enforcement officers of the State of Indiana, or any political subdivision, to enforce the provisions of **IC 25-31-1** and to apprehend and prosecute any person who violates any of those provisions. (**IC 25-31-1-28**)

A person who practices or offers to practice engineering without being registered or exempted under the laws of this state commits a Class B misdemeanor. (**IC 25-31-1-27**)

Keeping Up with Technology

Indiana LTAP

The Indiana LTAP center is one source for continuing technological information. Its mission is to foster a safe, efficient, environmentally sound transportation system by improving the skills and knowledge of local transportation providers through training, technical assistance, and technology transfer. This is done through publications, reports, a resource library, a 1-800 line, and conferences.

Indiana LTAP has over 250 publications available for distribution to local public agencies. Technical publications include the "Bridge Sufficiency Rating Report," published and distributed annually. Another is the "Local Option Highway User Tax – Guide to Revenue Calculations (LOHUT) Report." The *Pothole Gazette* is published six times a year and contains articles on various engineering and related topics, keeping readers informed about activities taking place around Indiana. The resource library contains over 2,000 publications and almost 300 videotapes. If you have a question, make a quick call to 1-800-428-7639 and someone will be happy to search the database of publications for you.

Indiana LTAP also has several seminars and workshops throughout the year. The main conferences include the Purdue Road School held annually in March, the county bridge conference each January, the storm water drainage conference in February, and the transportation engineering conference that takes place every September. Workshops cover a wide variety of topics ranging from budget preparation to traffic signal maintenance and operation.

Be sure to visit the Indiana LTAP web page at www.ecn.purdue.edu/INLTAP. It is continuously updated with information about publications, resources, and upcoming events.

The World Wide Web

The internet is one of the best tools available to stay connected to changing technology topics. Not only is it convenient and fast, but it is also our best source of up-to-date information. Here are a few websites that may contain useful information:

- www.fhwa.dot.gov
- www.dot.gov
- www.state.in.us/dot
- www.ltap.org

Questions and Answers About Engineering & Technology

Q: What are some dust control methods?

Answer: Water, magnesium and calcium chloride, oils and resinous adhesives, lignin derivatives.

Q: What is the difference between anti-icing and deicing?

Answer: Anti-icing prevents snow and ice from bonding with the pavement surface. Deicing destroys an existing bond between snow and ice and the pavement surface. Anti-icing requires only one-fifth the amount of chemicals that are required for deicing.

Q: If I apply for a development permit, must I notify adjoining landowners?

Answer: Yes. Whenever a permit is required for development in an area, notice must be given to the adjoining property owners and to all occupants of the property. This must be done no more than 10 working days after submitting a permit application. The notice must be in writing, include the date on which the application for the permit was submitted and a brief description of the subject of the application. (**IC 13-15-8-2 & IC 13-15-8-3**)

Q: When would I need to apply for a storm water runoff permit?

Answer: Whenever construction activities will result in the disturbance of five acres or more of total land area, a permit must be filed with the IDEM Office of Water Quality.

Q: When would I need to apply for an Army Corps of Engineers Section 404 Permit?

Answer: Whenever a project will involve placing fill materials, excavating or mechanically clearing within a wetland, lake, river, or stream. If the Corps of Engineers decides a Section 404 Permit is needed, then a Section 401 Water Quality Certification Permit from IDEM is also necessary.

Q: Is open burning allowed on a construction site?

Answer: Only if an air curtain destructor is used, and provided prior approval is obtained from the IDEM Office of Air Quality. Open burning is generally not allowed. A safe alternative is to take vegetative and naturally-occurring woody wastes to a registered yard waste composting facility.

Q: What is the difference between a Request for Qualifications (RFQ) and a Request for Proposals (RFP)?

Answer: An RFQ is normally used to determine the general qualifications of consultants or their particular qualifications in a selected area of expertise. An RFP is used in conjunction with specific projects or studies and contains details such as the scope of services desired, project descriptions, and budget allocations.

Q: How often should bridge inspections be done?

Answer: Every bridge should have a routine inspection performed by personnel qualified in accordance with the National Bridge Inspection Standards at intervals not to exceed 24 months.

Q: What exactly do the bridge sufficiency ratings mean?

Answer: The sufficiency ratings represent a composite rating weighted to assess the following qualities of the bridge:

- Structural adequacy and safety.
- Serviceability and functional obsolescence.
- How essential it is for public use.

The ratings vary from 0 to 100, with a lower value indicating a lower degree of sufficiency but a higher degree of need for either replacement or repair. To be eligible for federal aid funding, a bridge must be both deficient and possess a sufficiency rating value between 0-49.99 for replacement, or between 50 and 79.99 for rehabilitation.

Q: If a small engineering job is done in-house, is it really necessary to draw up full plans and have them signed and sealed?

Answer: Yes. Any public agency may not engage in construction or maintenance of any public work involving the practice of engineering for which plans, specifications, and estimates have not been prepared, certified and sealed by a professional engineer.
(IC 25-31-1-19)

Statutes

IC 5-16-11.1-4

Sec. 4. (a) When professional services are required for a project, a public agency may:

(1) publish notice in accordance with IC 5-3-1;
(2) provide for notice (other than notice in accordance with IC 5-3-1) as it determines is reasonably calculated to inform those performing professional services of a proposed project;

(3) provide for notice in accordance with both subdivisions (1) and (2); or

(4) determine not to provide any notice.

(b) If the public agency provides for notice under subsection (a)(1), (a)(2), or (a)(3), each notice must include:

- (1) the location of the project;
(2) a general description of the project;
(3) the general criteria to be used in selecting professional services firms for the project;
(4) the place where any additional project description or specifications are on file;
(5) the hours of business of the public agency; and
(6) the last date for accepting statements of qualifications from interested parties.

As added by P.L.24-1985, SEC.16. Amended by P.L.51-1988, SEC.1.

IC 5-16-11.1-5

Sec. 5. A public agency may make all contracts for professional services on the basis of competence and qualifications for the type of services to be performed and negotiate compensation that the public agency determines to be reasonable.

As added by P.L.24-1985, SEC.16.

IC 8-16-3-1.5

Sec. 1.5. As used in this chapter:

(1) "Bridge" means any structure designed to carry vehicular traffic over or under an obstacle to the normal flow of traffic and including any grade separation, culvert, or approach to a bridge.

(2) "Approach" means any part of a road or street which is required to make a bridge a viable part of a county road or city street system but which does not extend more than five hundred (500) feet from the bridge.

(3) "Construction" means both construction and reconstruction to a degree that new, supplementary, or substantially improved traffic service is provided and significant geometric or structural improvements are affected.

(4) "Cost" means all expenditures required to construct, maintain, or repair a bridge, including engineering, equipment, land acquisition, materials, contracts, and bond interest.

(5) "Municipal corporation" means a city or town.

IC 13-15-1-1

Sec. 1. The air pollution control board shall establish requirements for the issuance of permits to control air pollution, noise, and atomic radiation, including the following:

(1) Permits to control or limit the emission of any contaminants into the atmosphere.

(2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the air.

(3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the environment.

As added by P.L.1-1996, SEC.5.

IC 13-15-1-2

Sec. 2. The water pollution control board shall establish requirements for the issuance of permits to control water pollution and atomic radiation, including the following:

(1) Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.

(2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned treatment works.

(3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the waters of Indiana or into a publicly owned treatment works.

However, the water pollution control board may not require a permit under subdivision (2) for any facility, equipment, or device constructed, installed, or modified as part of a surface coal mining operation that is operated under a permit issued under IC 14-34.

As added by P.L.1-1996, SEC.5. Amended by P.L.123-1996, SEC.11.

IC 13-15-1-3

Sec. 3. The solid waste management board shall establish requirements for the issuance of permits to control solid waste, hazardous waste, and atomic radiation, including the following:

(1) Permits to control or limit the disposal of any contaminants onto or into the land.

(2) Permits for the construction, installation, or modification of facilities, equipment, or devices:

(A) to control or limit any discharge, emission, or disposal of contaminants into the land; or

(B) for the storage, treatment, processing, transferring, or disposal of solid waste or hazardous waste.

(3) Permits for the operation of facilities, equipment, or devices:

(A) to control or limit the discharge, emission, transfer, or disposal of any contaminants into the land; or

(B) for the storage, transportation, treatment, processing, transferring, or disposal of solid waste or hazardous waste.

As added by P.L.1-1996, SEC.5.

IC 13-15-8-1

Sec. 1. (a) This chapter applies to an application for a permit issued under IC 13-15-1 upon property:

(1) that is undeveloped; or

(2) for which a valid existing permit has not been issued.

(b) This chapter does not apply to an application for a permit issued under IC 13-15-1 if the permit is for the construction, installation, or modification of any of the following:

(1) A combined sewer.

(2) A sanitary sewer.

(3) A storm sewer.

(4) A public water supply.

(5) A water main extension.

As added by P.L.1-1996, SEC.5.

IC 13-15-8-2

Sec. 2. Not more than ten (10) working days after submitting an application for a permit issued under IC 13-15-1 or IC 13-7-10.1-1 (before its repeal), the person that submitted the application for the permit shall make a reasonable effort to provide notice:

(1) to all owners of land that adjoins the land that is the subject of the permit application; or

(2) if the owner of land that adjoins the land that is the subject of the permit application does not occupy the land, to all occupants of the land; that the person has submitted the application for the permit.

As added by P.L.1-1996, SEC.5.

IC 13-15-8-3

Sec. 3. The notice provided by a person under section 2 of this chapter must:

- (1) be in writing;
- (2) include the date on which the application for the permit was submitted to the department; and
- (3) include a brief description of the subject of the application.

As added by P.L.1-1996, SEC.5.

IC 13-15-8-4

Sec. 4. A person that submits an application for a permit under IC 13-15-1 shall pay the costs of complying with this chapter.

As added by P.L.1-1996, SEC.5.

IC 13-20-9-1

Sec. 1. This chapter does not apply to the following:

(1) The use of vegetative matter resulting from landscaping maintenance and land clearing projects that, after composting, is used as cover material for a solid waste landfill.

(2) The deposit into a solid waste landfill of:

- (A) grass;
- (B) woody vegetative matter that is:
 - (i) less than three (3) feet in length; and
 - (ii) bagged, bundled, or otherwise contained; or
- (C) de minimis amounts of vegetative matter that are:
 - (i) less than three (3) feet in length;
 - (ii) bagged, bundled, or otherwise contained; and
 - (iii) not set out separately for collection and disposal.

As added by P.L.1-1996, SEC.10.

IC 13-20-9-2

Sec. 2. Except as provided in section 4 of this chapter, a person may not knowingly deposit vegetative matter resulting from landscaping maintenance and land clearing projects in a solid waste landfill.

As added by P.L.1-1996, SEC.10.

IC 13-20-9-3

Sec. 3. The solid waste management board may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.1-1996, SEC.10.

IC 13-20-9-4

Sec. 4. If an emergency exists, the county executive of a county may, by resolution or order:

- (1) waive the prohibition under section 2 of this chapter; and

(2) allow vegetative matter resulting from landscaping maintenance and land clearing projects to be deposited in the solid waste landfill; for not more than ninety (90) days.

As added by P.L.1-1996, SEC.10.

IC 14-26-2-9

Sec. 9. (a) Upon written application by the owner of land abutting a public freshwater lake and payment of a nonrefundable fee of twenty-five dollars (\$25), the department may issue a permit to:

- (1) change the shoreline; or
- (2) alter the bed; of a public freshwater lake after investigating the merits of the application.

(b) As a condition precedent to granting a permit, an applicant must, in writing, do the following:

(1) Acknowledge that all additional water area created is a part of the lake.

(2) Dedicate the additional area to the general public use.

As added by P.L.1-1995, SEC.19.

IC 14-26-5-3

Sec. 3. A person may not:

(1) locate, make, dig, dredge, construct, reconstruct, repair, or reclean; or

(2) order or recommend the location, establishment, construction, reconstruction, repair, or recleaning of; a ditch or drain having a bottom depth lower than the normal water level of a lake within one-half (1/2) mile of the lake without a permit from the department.

As added by P.L.1-1995, SEC.19.

IC 14-26-5-4

Sec. 4. A request for a permit may be made by any person interested in the proposed work by filing with the department the following:

(1) A brief statement and description of the work.

(2) Plans and specifications for the work.

(3) An investigation fee of twenty-five dollars (\$25).

As added by P.L.1-1995, SEC.19.

IC 14-26-5-5

Sec. 5. The department shall promptly consider a request by making an investigation of the land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work.

As added by P.L.1-1995, SEC.19.

IC 14-26-5-6

Sec. 6. If the department finds that the proposed work will not:

(1) endanger:

(A) the legally established water level of a lake; or

(B) the normal water level of a lake whose water level has not been legally established; or

(2) result in unreasonably detrimental effects upon fish, wildlife, or botanical resources; the department shall promptly grant the request and issue a permit to the person requesting the permit.

As added by P.L.1-1995, SEC.19.

IC 14-26-5-7

Sec. 7. If the department finds that the proposed work could be done provided certain safeguards are included in the proposed work, the department shall designate the safeguards that will in the department's opinion protect the lake.

As added by P.L.1-1995, SEC.19.

IC 14-26-5-7.4

Sec. 7.4. If a request for a permit is submitted under this chapter by or for a county drainage board for a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27, the department shall approve or refuse the request within one hundred fifty (150) calendar days after the request is deemed complete by the department. A request held more than one hundred fifty (150) calendar days by the department without being either approved or refused shall be considered approved.

As added by P.L.180-1995, SEC.2.

IC 14-26-5-7.6

Sec. 7.6. (a) If the department refuses to issue a permit after an investigation under section 5 of this chapter, the department shall promptly cause a public notice to be given by one (1) publication in a newspaper of general circulation published in the county in which the lake or any part of the lake is located. The notice must state that, on the date set forth in the notice, which may not be less than ten (10) days after the publication, at a designated place in the county, the department will hold a hearing on the request, and any interested person appearing at the hearing will have the right to be heard. The notice must contain a brief description of the proposed work and a statement of the department's reasons for refusing to issue a permit and of the safeguards, if any, that the department considers necessary to protect the water level of the lake. The hearing shall be held by the director of the department or by the director's designee. A hearing held under this subsection is a nonevidentiary hearing. The rules of evidence and IC 4-21.5 do not apply to the hearing.

(b) If the request of a county drainage board for a permit for a project for the reconstruction and maintenance of a regulated drain under IC 36-9-27 is refused, the department shall publish the public notice required by subsection (a) within sixty (60) days after the permit is refused.

As added by P.L.180-1995, SEC.3.

IC 14-26-5-8

Sec. 8. A permit issued under this chapter expires two (2) years after the permit is issued.

As added by P.L.1-1995, SEC.19.

IC 14-26-5-9

Sec. 9. The person to whom a permit is issued under this chapter shall do the following:

(1) Post the permit at the site of the activity authorized by the permit.

(2) Keep the permit posted at the site where the activity is authorized until the activity is completed.

As added by P.L.1-1995, SEC.19.

IC 14-28-1-22

Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.

(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

(c) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained; in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(2) Constitute an unreasonable hazard to the safety of life or property.

(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation.

The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and

(2) to:

(A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or

(B) an electric utility for the construction of a power generating facility; is valid for five (5) years from the date of issuance and remains valid indefinitely if construction is commenced within five (5) years after the permit is issued.

(h) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal); that is affected.

(i) The permit holder shall post and maintain a permit issued under this section at the authorized site.

As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.4; P.L.2-1997, SEC.53; P.L.135-1997, SEC.14; P.L.2-1998, SEC.59.

IC 14-29-1-8

Sec. 8. (a) A person, other than a public or municipal water utility, may not:

(1) place, fill, or erect a permanent structure in;

(2) remove water from; or

(3) remove material from; a navigable waterway without a permit from the department.

(b) An application for a permit under this section must be made in a manner prescribed by rule.

(c) The department shall issue a permit if the issuance of the permit will not do any of the following:

(1) Unreasonably impair the navigability of the waterway.

(2) Cause significant harm to the environment.

(3) Pose an unreasonable hazard to life or property.

(d) A separate permit is not required under this section for an activity permitted under any of the following:

(1) IC 14-21-1.

(2) IC 14-28-1.

(3) IC 14-29-3.

(4) IC 14-29-4.

(5) IC 14-34.

(6) IC 14-37

However, a permit issued under a statute specified in this subsection must also apply the requirements of this section with respect to an activity within a navigable waterway.

(e) A separate permit is not required under this section for an activity for which a permit has been issued under any of the following:

(1) 16 U.S.C. 1451 et seq. (the federal Coastal Zone Management Act).

(2) 33 U.S.C. 1344 (the federal Clean Water Act).

(3) 42 U.S.C. 9601 et seq. (the federal Comprehensive Environmental Response, Compensation, and Liability Act).

(f) The department shall adopt rules under IC 4-22-2 to implement this section.

(g) A person who violates this section commits a Class B infraction.

As added by P.L.1-1995, SEC.22.

IC 14-29-3-1

Sec. 1. The department may issue a permit to a person to take sand, gravel, stone, or other mineral or substance from or under the bed of the navigable water of Indiana.
As added by P.L.1-1995, SEC.22.

IC 14-29-3-2

Sec. 2. In issuing a permit under this chapter, the department shall do the following:

(1) Fix by the permit the area within which it is lawful and in the best interests of the state to permit the taking by the permittee of the mineral or substance.

(2) Fix by the permit and collect from the permittee when due the amount of the reasonable value of the mineral or substance to be taken, measured by weight, cubic dimensions, or other common and usual measurement.

(3) Collect a fee of fifty dollars (\$50) for each permit issued.

As added by P.L.1-1995, SEC.22.

IC 14-29-3-3

Sec. 3. (a) A permit issued under this chapter must include the following conditions:

(1) The permittee shall give bond in the amount and with surety approved by the department for full and prompt compliance with the terms and conditions of the permit.

(2) The permittee shall, monthly or quarterly as the department stipulates, make to the department a verified report and full account and payment for all mineral or substance taken during the preceding month or quarter.

(3) The department may, at any time in reasonable hours, inspect the following:

(A) All books, papers, and records of the permittee relating to the account.

(B) The works and workings of the permittee.

(4) The department may revoke or suspend the permit for the failure of the permittee to comply with this chapter or with the terms and conditions of the permit.

(5) Subject to suspension or revocation, the permit will remain in force for the period that the department determines, not to exceed five (5) years from the date of issuance. However, the permit may be renewed by the permittee by written application filed with the department six (6) months before expiration of the permit.

(6) The works, workings, and operations under the permit must not do any of the following:

(A) Impede the navigation of the water.

(B) Damage or endanger a bridge, highway, railroad, public work, utility, or the property of a riparian

owner or adjoining proprietor or adjacent permittee.

(C) Endanger the lives of individuals.

(7) The permittee shall take the measures, to be determined by the department and stipulated in the permit, that are reasonable to avoid the damage and danger.

(b) The department may also prescribe other reasonable conditions in the permit that are in the best interests of the state.

As added by P.L.1-1995, SEC.22.

IC 14-29-4-4

Sec. 4. A person who desires to construct a channel must do the following:

(1) File a verified written application for a permit with the commission that does the following:

(A) States the material facts.

(B) Includes the plans and specifications for the construction of the channel.

(C) Identifies each facility to which the channel will provide access.

(2) Include with the application a nonrefundable fee of one hundred dollars (\$100).

As added by P.L.1-1995, SEC.22.

As added by Acts 1977, P.L.113, SEC.2. Amended by P.L.8-1989, SEC.54; P.L.104-1993, SEC.1.

IC 25-31-1-19

Sec. 19. (a) A county, city, town, township, school corporation, or other political subdivision of this state may not engage in the construction or maintenance of any public work involving the practice of engineering for which plans, specifications, and estimates have not been prepared, certified, and sealed by, and the construction and maintenance executed under the direct supervision of, a professional engineer. Any contract executed in violation of this section is void.

(b) An official of this state, or of any city, town, county, township, or school corporation, charged with the enforcement of any law, ordinance, or rule relating to the design, construction, or alteration of buildings or structures may not use or accept or approve any plans or specifications that have not been prepared by, or under the supervision of and certified by, a registered professional engineer. This subsection does not apply:

(1) to plans or specifications prepared by, or under the supervision of and certified by, an architect who is registered under IC 25-4-1;

(2) to structures and construction listed in IC 22-15-3-3(a); or

(3) to plans or specifications contained in a registration, license, or permit application, including an

application for an initial permit, the renewal of a permit, the modification of a permit, or a variance from a permit submitted to the commissioner of the department of environmental management under IC 13, unless the permit is for the approval of plans or specifications for construction for which a professional engineer's seal is required by operation of either state or federal law, rule, or regulation. This subsection does not require a professional engineer's seal for an application for an air quality construction permit under 326 IAC 2-1-3.

This section shall not be construed as to abridge or otherwise affect the powers of any state board or department to issue rules governing the safety of buildings or structures.

(c) All maps required to show the underground workings of any mine in Indiana must be prepared, certified, and sealed by a professional engineer or land surveyor.

(Formerly: Acts 1935, c.148, s.19; Acts 1947, c.262, s.8; Acts 1957, c.320, s.9; Acts 1961, c.277, s.9; Acts 1965, c.284, s.9.) As amended by P.L.8-1984, SEC.121; P.L.23-1991, SEC.26; P.L.215-1993, SEC.19; P.L.82-1994, SEC.30; P.L.246-1995, SEC.1.

IC 25-31-1-20

Sec. 20. (a) An employee or a subordinate of any person who holds a certificate of registration under the provisions of this chapter is exempt from the provisions of this chapter if the practice of the employee or subordinate does not include responsible charge of design or supervision.

(b) This chapter does not require registration for the purpose of practicing engineering by an individual or a business:

(1) on property owned or leased by that individual or business unless the engineering practice involves the public health or safety, or the health or safety of the employees of that individual or business;

(2) for the performance of engineering which relates solely to the design or fabrication of manufactured products; or

(3) that is registered as a landscape architect under IC 25-4-2 and while the individual or business is engaged in the practice of landscape architecture planning the use of land or water.

(Formerly: Acts 1935, c.148, s.20; Acts 1947, c.262, s.9; Acts 1951, c.125, s.1; Acts 1961, c.277, s.10; Acts 1969, c.279, s.7.) As amended by Acts 1982, P.L.154, SEC.103; P.L.23-1991, SEC.27; P.L.1-1993, SEC.198; P.L.215-1993, SEC.20.

IC 25-31-1-27

Sec. 27. A person who:

(1) practices or offers to practice engineering without being registered or exempted under the laws of this state;

(2) presents as the person's own the certificate of registration or the seal of another;

(3) gives any false or forged evidence of any kind to the board or to any member of the board in obtaining a certificate of registration;

(4) impersonates any other registrant;

(5) uses an expired, suspended, or revoked certificate of registration; or

(6) otherwise violates this chapter;

commits a Class B misdemeanor.

(Formerly: Acts 1935, c.148, s.27; Acts 1947, c.262, s.11.) As amended by Acts 1978, P.L.2, SEC.2554; P.L.23-1991, SEC.30; P.L.215-1993, SEC.27.

IC 25-31-1-28

Sec. 28. (a) It is the duty of all law enforcement officers of this state, or any political subdivision, to enforce the provisions of this chapter and to apprehend and prosecute any person who violates any of the provisions of this chapter.

(b) The attorney general shall act as the legal advisor of the board and render any legal assistance as may be necessary in carrying out the provisions of this chapter.

(Formerly: Acts 1935, c.148, s.28.) As amended by Acts 1982, P.L.154, SEC.106; P.L.215-1993, SEC.28.



National Transportation Act Authorization

Introduction

"Nothing happens unless something moves" is now a motto of the U. S. Army Transportation Corps. There's much more to it. Even before the birth of the United States, transportation was a critical component of life and commerce. The nation is still on the move. Mobility is now almost an inherent right ingrained in U.S. society. It requires supporting infrastructure. Transportation infrastructure requires immense financial resources for both construction and maintenance. Prior to the nineties, the length of the transportation authorization varied. To provide more certainty in the planning process, the current authorizations are for a period of six years. The authorization process generally begins two years before the current law expires. The first Federal Aid Highway Act was passed in 1916, and it was followed by successors to the present day. In the 1990s and early 2000s, the national transportation law evolved through the Intermodal Surface Transportation Efficiency Act to TEA-21, the version expiring in 2003.

The Legacy of the Transportation Efficiency and Equity Acts

The driving force in writing a transportation bill is making decisions about scarce financial resources and how the government uses these resources to ensure mobility for U.S. citizens and the nation's commerce. A long line of national transportation laws and authorizations between 1921 and 1991 focused heavily on highways and the interstate system... The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA-91) marked a strategic shift from the earlier near-total focus on highways to an intermodal and more local approach. In 1997, the ISTEA-91 continuation became known as the Transportation Equity Act for the 21st Century (TEA-21).

The National Capitol is the seat of the Legislative Branch where the deliberative process generates actions affecting every individual. The National Transportation Authorization process is one of the most significant. The driving force in the process of writing a national transportation bill is decision making about scarce financial resources and how these resources will be used to ensure mobility and safety for U.S. citizens and the nation's commerce. (File Photo)

TEA-21 confirmed the intermodal shift by maintaining this philosophy in its provisions.

Features of TEA-21 included:

- Assurance of a guaranteed level of federal funds for surface transportation through 2003.
- Extension of the Disadvantaged Business Enterprises Program.
- Strengthening of safety programs.
- Continuation of proven program structure established for highways and transit.
- Investing in research and its application.
- Investing in research and its application with special emphasis on intelligent transportation systems.
- Additional features included transportation enhancements (chapters 4 and 5), congestion mitigation, bicycle transportation and pedestrian walkways, recreational trails, scenic byways, planning (chapter 5) and transportation community and system preservation pilot projects. Administrative provisions provide procedures for the transfer of funds.

Transportation Law Reauthorization Process

Reauthorization or continuation of TEA-21 is the way the United States does business now. It is a deliberative process—two years of work for a six-year bill. Until the federal government makes its decisions on transportation authorization, and then the states make theirs, the validity of state and local agency planning assumptions remains tenuous and uncertain. TEA-21 was scheduled to expire on September 30, 2003, but by that time, no firm progress to a final bill had occurred and the law was extended into 2004. Some new movement was taking place in early 2004 as this manual was on the way to the printer.

The Next Authorization. SAFETEA

In May 2003 the U.S. Secretary of Transportation sent the Bush administration's bill to Capitol Hill. This new TEA was dubbed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003. The proposal included a request for more than double the funding for highway safety than TEA-21. The message clearly addresses the nation's serious highway safety problem, which results in the loss of more than 43,000 lives and costs billions of dollars annually. The proposal continues funding guarantees of TEA-21, addresses the need to smooth out swings in annual highway funding, establishes a new pilot program for the states to manage core program CMAQ funds, simpler, more flexible transportation funding options, and programs to help ensure that transportation projects are completed on budget and on time. Other areas addressed are freight efficiency for NHS set-asides to highway connections between NHS and intermodal freight facilities, and mechanisms for strengthening stewardship of federal funds without treading on state prerogatives (FHWA 2003). In 2003, FHWA established a web page with information about reauthorization, the proposal and press releases by the Secretary of Transportation and the FHWA information. <http://www.dot.gov/affairs/dot04003.htm/>.

Follow-up Proposals

In late 2003, the House Transportation and Infrastructure Committee introduced its version: Transportation Efficiency Act: a Legacy for Users. Other proposals will surely be brought forth as the process continues.

Congressional Committees

Role. Congressional committees, each of which has jurisdiction over a specific area, are central to the process. The committee title reflects the general area of legislative and policy focus. Most committees are divided into subcommittees, which are empowered to hold hearings, conduct investigations, and develop reports and studies. This structure consolidates decision making on broad public policy areas. The committee and subcommittee hearings are the key steps to authorization.

Responsibility. The congressional subcommittee responsible for the authorization legislation for the Federal Aid Highway Program in the U.S. House of Representatives is the Ground Transportation Subcommittee of the Committee on Transportation and Infrastructure; in the U.S. Senate, the Subcommittee on Transportation and Infrastructure of the Environment and Public Works. Mass transit and safety fall under the House committee. This division of work differs somewhat in the Senate where the Commerce, Science and Transportation Committee has jurisdiction over safety, while the Banking, Housing and Urban Affairs Committee has jurisdiction over mass transit. The Highway Trust Fund and other funding matters are the responsibility of the House Ways and Means Committee and the Senate Finance Committee (FHWA 1999). (See Figure 12-1).

Funding Issues

Equity

The TEA-21 philosophy is indeed equity. Areas of concern addressed in the law include guaranteed spending levels. Highway guaranteed spending amounts are now keyed to actual Highway Trust Fund receipts. Now, minimum guarantee funds for individual programs enhance the equity of funds distribution. Apportionment is now accomplished by formula using factors relevant to a particular program. Thus, each state receives an equitable distribution. The FHWA Fact Sheets and the legislation spell out the details (FHWA 2001).

The Highway Trust Fund

The Highway Trust Fund (HTF) is the source of funding for most TEA-21 programs. The highway account within the HTF provides the dollars for highway and intermodal programs. User taxes provide the lion's share of the available money. Federal law regulates imposition of taxes deposited in the HTF. The act also provides for the deposit of almost all highway user taxes (federal) extended through September 2005.

Role of INDOT

INDOT's Office of Communications and State Legislation works to enhance communications with federal agencies and Congress. Included locally is the FHWA Indiana Division. The office also works with the General Assembly, focusing more on the State transportation issues and plans and developing the INDOT portion of the State budget. INDOT's intergovernmental role is discussed in Chapter 3, Intergovernmental Relations, and in Chapter 4, Funding.

Advocacy

Listed below are some of the advocacy organizations that research and educate their membership and the public on transportation and public works issues. These organizations are an excellent source of information, research and education and play key roles in professional development and advocacy. Some examples follow.

American Public Works Association. The American Public Works Association is an international educational and professional association of public agencies, private sector companies, and individuals dedicated to providing high quality public works goods and services. Chartered in 1937, APWA is the largest and oldest organization of its kind in the world, with headquarters in Kansas City, Missouri, an office in Washington, D.C., and 67 chapters throughout North America. APWA provides a forum in which public works professionals can exchange ideas, improve professional competency, increase the performance of their agencies and companies, and bring important public works-related topics to public attention in

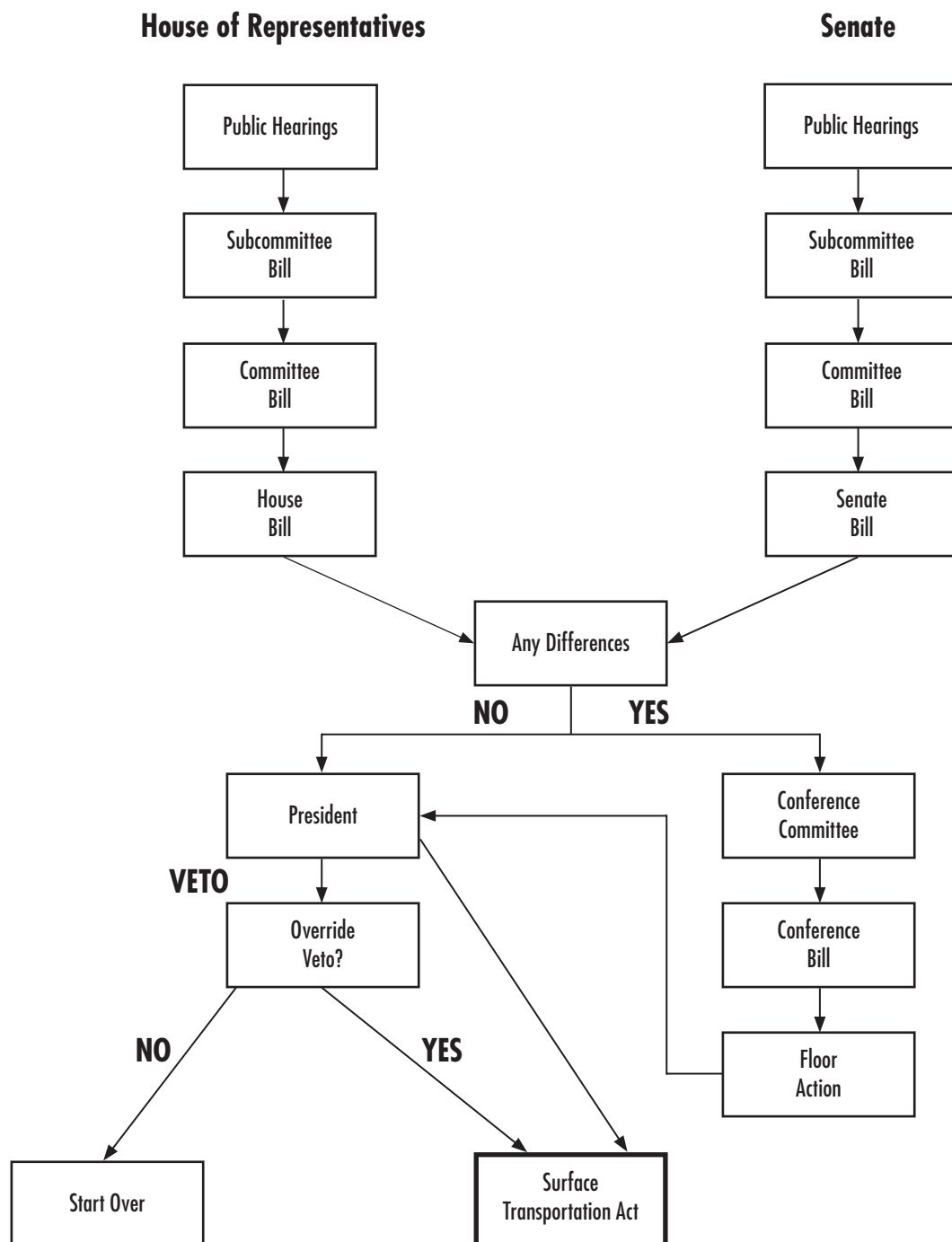


Figure 12-1. Congressional Authorization Process

local, state and federal arenas. Highly participatory, APWA provides opportunities for leadership and service, and a network of several dozen national committees in every area of public works. It is governed by a 17 member board of directors and uses a committee process to research and report on the various aspects of public works. <http://www.apwa.net>

The Indiana Chapter, APWA, carries out APWA work at state and local levels through a number of events and programs. APWA, Indiana URL: <http://indiana.apwa.net/>

The American Road & Transportation Builders Association (ARTBA) is the U.S. transportation construction industry's representative in Washington, D.C. Its mission: advocating strong federal investment in the nation's transportation infrastructure to meet public demand for a safe and efficient business transportation network. <http://www.artba.org/>

Build Indiana Council. ARTBA is also linked to Better Roads and Transportation Councils throughout the nation. In Indiana, the link is the Build Indiana Council. Contact information: One

North Capitol, Suite 305, Indianapolis, Indiana 46204. Phone: 317-634-4774; Fax: 317-637-8791

American Highway Users Alliance. A nonprofit advocacy organization serving as the united voice of the transportation community promoting safe, uncongested highways and enhanced freedom of mobility. <http://www.highways.org/>

Indiana Constructors, Inc. An advocate for highway, heavy and utility contractors across the state. The organization accomplishes this by working to build solid, long-lasting relationships with state and local government leaders, removing barriers to greater business opportunities and improving the prestige of the construction industry throughout Indiana and the nation. <http://www.indian Constructors.org/>

National Association of County Engineers (NACE). A professional association in its sixth decade of representing county engineers and professional road managers. It is an affiliate of the National Association of Counties (NACO). Web Site: www.countyengineers.org

American Association of State Highway and Transportation Officials. AASHTO is a nonprofit, nonpartisan association representing highway and transportation departments in the fifty states, the District of Columbia and Puerto Rico. <http://transportation1.org/aashtonew/>

Transportation Issues for the Future

- Time and place utility (people, places and things)
- Safety
- Mass urban and rural transit
- Economic development versus status quo and decline
- Sociology
- Sprawl
- Environmental issues
- Multimodal issues and advocacy
- Congestion-highway and air, and their alternatives
- High-speed rail versus air and highway funding
- Enhancements, including funding historic projects
- Historic preservation
- Historic trails and linear trails
- Regionalism and regional approaches and funding—who gets the money
- State shares

Questions and Answers About Transportation Legislation Reauthorization Process

Q: What is the time length of the current legislation?

Answer: The recent family of acts have run for six years to achieve more consistency and stability in the planning process. Prior to 1991 this was not the case.

Q: Where can I find information about the transportation legislative reauthorization process?

Answer: A significant amount of information is available through federal agencies, associations and Internet websites.

- The American Public Works Association
- Indiana Chapter, American Public Works Association
- Federal Highway Administration and the U.S. Department of Transportation
- The American Association of State Transportation and Highway Officials
- National Association of Counties
- National Association of County Engineers (NACE)
- American League of Cities
- The U.S. Conference of Mayors
- American Highway Users Alliance
- Indiana Department of Transportation
- American Association of State Highway and Transportation Officials (AASHTO)

Q: Where can I find information about the day-to-day business of congressional committees addressing transportation and infrastructure issues?

Answer: The Internet capability greatly simplifies this task. Each committee has a website, which contains member information, agendas, and press releases. Contact information is also available on these sites. In addition to using a major search engine, search through the public affairs broadcasting system at <http://www.c-span.org/> C-Span also provides a useful online congressional directory.

Q: What congressional committees are key to the TEA-21 reauthorization process?

Answer: House: Transportation and Infrastructure Committee and its subcommittees. Senate: Commerce, Science and Transportation Committee.



The condition of 20th Century roads gradually improved with mechanization. In this photo, a Fordson Tractor pulls a one man road grader working down a gravel road. This was a big improvement over the older King Drag and jury rigged grading systems. The Federal Aid Highway act of 1916 provided the impetus for the improvement of roads throughout America. (Photo: Tippecanoe County Historical Association).



Special Challenges

Introduction

Local Public Agencies are faced with the challenge of regulation in important areas. First, is the National Environmental Policy Act requirements for environmental assessments of road and street projects. Preservation issues are reviewed as is the Section 106 Process. Attempts to shorten the time required for these reviews include identifying those structures for which agreement can be reached as to historic value. Regardless, LPA's and their consultants are required to adhere to federal and state environmental and historic property regulations. This chapter wades into the environmental and preservation challenges and links local government road and street official's agencies that are both gatekeepers and enablers. What are these roles and how do they interact to ensure that both the private and public interests are addressed? The answers are not always obvious, but the citizen and taxpayer is the ultimate arbiter for many of these issues. Agencies with which local government transportation planners must interact are the Indiana Department of Transportation (INDOT), the Department of Environmental Management (IDEM), the Indiana Department of Natural Resources (DNR), especially the State Historic Preservation Office (SHPO), U.S. Army Corps of Engineers, U.S. Natural Resources Conservation Service (NCRS), U. S. Departments of the Interior and Forestry, and others. The Indiana agencies are assisted by the Federal Highway Administration, Indiana Division (FHWA-Indiana Division).

This Bridge Was Saved.

In 1999, Jefferson County Engineer Jim Olson faced a challenge on a low volume road in northwestern Jefferson County: remove or keep the Tobias Bridge. This bridge is historic not only because of its design but also because of the unique high and massive abutments. The option of upgrading and repairing the existing Tobias Bridge was subjected to a rigorous economic analysis. The results indicated that the cost effective repair and strengthening alternative was viable. The bridge was saved.

The Environmental Assessment Process—Federal Compliance

All federal-aid programs require compliance with federal civil rights and labor laws, property acquisition laws, the Uniform Relocation Act Public Law, the Architectural Barriers Act, and the National Environmental Policy Act (NEPA), among others. Also included are The Common Rule (49 CFR 18), with respect to procurement and the Brooks Act with respect to consultant selection. Compliance is also required for the Endangered Species Act and the National Historic Preservation Act. The federal government has delegated responsibility to the state for compliance with these laws under U.S. Code Title 23, Section 302.

Those requirements pertaining to local road and street work have been covered where applicable in the preceding chapters. The purpose here is to summarize generally and to call attention to NEPA and state environmental requirements, IDEM permit guidance and to historic preservation and Section 106 guidance.

The federal-aid highway program is governed by 23 USC (Title 23: Highways). These federal laws are the authority from which state departments of transportation derive their supervisory role over federally aided road projects. Although Title 23 is implemented by INDOT, a working familiarity with Title 23 will help Local Public Agencies and their consultants make informed judgments on proposed regulation, revisions and practice, not to mention aiding them in complying with the myriad of environmental and preservation regulations and rules.

The Federal Aid Policy Guide

The overarching guidance is found in the Federal Aid Policy Guide (FAPG), which replaced the older Federal Aid Program Manual. The Guide is accessible on Internet. (URL: <http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm>) Much of it repeats Sections of Title 23, Code of Federal Regulations pertaining to Federal Highway Administration. The FAPG contains the FHWA's implementation of aspects of the Environmental Policy Act as implemented by the state and with which LPAs and their consultants are required to comply on projects using federal funds.

Of particular concern is the requirement that work on a highway or road project not proceed until environmental assessments requirements have been met. The FHWA, in

cooperation with the applicant, will perform the work necessary to complete a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS) and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. Final design activities, property acquisition (with the exception of hardship and protective buying, as defined in Sec. 771.117(d)), purchase of construction materials or rolling stock, or project construction shall not proceed until the environmental process is completed. See the relevant sections of the Federal Aid Policy Guide or contact INDOT to ensure that the process and procedures are understood. In sum, these things must have happened:

- The action has been classified as a categorical exclusion (CE), or
- A FONSI has been approved, or
- A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed; and
- Required public hearing certifications and transcripts have been completed.

INDOT'S Role in compliance with NEPA and other Federal Laws

The Indiana Department of Transportation is the state agency responsible for carrying out these policies. INDOT has done a thorough job of communicating and the Environmental publications are now available on the INDOT web page (<http://www.state.in.us/dot/>). Go to the publications link and page down to the key document, the Procedural Manual for Preparing Environmental Studies, August 2003. The manual's content is in PDF, so users will need to download Acrobat Reader to use the material. Only some key details are included here.

Some points about this publication. . .

- The objective of the manual is to focus on statutory and regulatory requirements for environmental documents for both local and INDOT projects.
- The manual is applicable to all transportation projects developed by the Indiana Department of Transportation (INDOT) and to all local agency highway or local streets and roads projects with funding or approvals by the Federal Highway Administration (FHWA).
- Its purpose is to assist in complying with the National Environmental Policy Act (NEPA) and related federal laws, executive orders, regulations, and policies. The manual is intended for those preparing, reviewing, or sponsoring federally funded highway and related projects.

The manual sets forth document content and format, as required by law or regulation, and recommended format, if not specified by law or regulation. Reports and documents prepared for projects on the state highway system shall adhere to the content

and recommended formats contained herein. In addition, the manual provides a number of tools for the development of the documentation including links to additional information.

The Environmental Assessment Documents

The following discussion appears in the INDOT Environmental Procedure manual and is repeated here. Readers and users should go directly to the web site as mentioned before for detailed requirements.

Categorical Exclusions

Categorical exclusions (CE's) are actions which, based on past experiences with similar actions, do not involve significant environmental impacts. They are actions which do not involve significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts, do not have significant impacts on travel patterns; or do not otherwise either individually or cumulatively have any significant environmental impacts. Where adverse environmental impacts are likely to occur, the level of analysis should be sufficient to define the extent of the impacts, identify appropriate mitigation measures and address known and foreseeable public agency concerns.

Three types of CEs exist, the simplest of which is a programmatic categorical exclusion (PCE). A PCE meets the criteria stated in the federal regulation 23 CFR 771.117 and does not require the FHWA-Indiana CE/EA E4 form to be completed. Secondly a statewide categorical exclusion (SCE) does not require FHWA involvement on a project by project basis. SCEs must not have substantial public opposition to the proposed project and must also meet the nine specific conditions listed in the Statewide Categorical Exclusion Determination section in the FHWA Indiana CE/EA Form. Finally, if conditions for a SCE are not met, but the project still qualifies as a CE, it is then classified as a federal categorical exclusion (FCE).

Environmental Assessments of No Significant Impact (FONSI)

Projects that do not qualify as a CE due to the possible magnitude of the impacts may instead require an Environmental Assessment (EA) to be completed. The primary purpose of an EA is to help the FHWA and INDOT decide whether or not an Environmental Impact Statement is needed. If the project is a major action but does not result in a Significant impact, a Finding of No Significant Impact (FONSI) is prepared.

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 - Programmatic Section 4(f) Evaluations
 - Applications of 6(f)
 - **Procedures**
 - Early Coordination
 - Section 106
 - Section 4(f)
 - Section 6(f)
 - Categorical Exclusions (CE)
 - Environmental Assessment (EA)
 - Environmental Impact Statement (EIS)
 - Guidance on "Purpose and Need"
 - Department of Agriculture Letter
 - Council on Environmental Quality Letter
 - Department of Transportation Letter
 - **Post Environmental Approval Procedures**
 - **Commitments and Recommendations**
 - **Graphics**
 - Potential Karst Features (8796K)
 - Sole Source Aquifer (1775K)
 - Corps of Engineers Districts
 - INDOT Districts
 - **Questionnaires**
 - INDOT Aeronautics
 - Natural Resource Conservation Service
 - Indiana Geological Survey
 - U.S. Forest Service
 - U.S. Coast Guard
 - **Memorandum of Understandings (MOU)**
 - Karst
 - U.S. Fish and Wildlife Programmatic 4(f)
 - U.S. Fish and Wildlife Early Coordination (1329K)
 - Wetlands
 - Metropolitan Planning Organizations
 - **Links**
 - FHWA Policies and Procedures
 - FHWA Planning, Environment, and Realty
- Contact the Environmental Assessment Section at (317) 232-5305
with questions or comment

Figure 13-1. Contents of INDOT Procedure Manual for Preparing Environmental Studies (INDOT)
URL: <http://www.state.in.us/dot/pubs/manuals/envirStudies/>

Environmental Impact Statements

A decision to prepare an Environmental Impact Statement (EIS) for a proposed federal action is made when the FHWA determines the action is likely to cause significant impacts on the human environment, the environmental study and /or early coordination indicated significant impacts, or when review of an EA indicates significant impacts.

Preservation Challenges— Division of Historic Preservation and Archeology, Indiana Department of Natural Resources

In Indiana, historic preservation is managed, monitored and regulated by Historic Preservation and Archeology Division of the Indiana Department of Natural Resources **IC 14-21-1**. Created in 1981 by state law, the Division of Historic Preservation and Archeology (DHPA) is the official state agency in charge of federal and state programs. The division shall administer and develop programs and policies **IC 14-21-1-11**.

Duties of the division (IC 14-21-1-12)

- Develop a program of historical, architectural, and archeological research
- Prepare a preservation plan for the state that establishes planning guidelines that encourages continuous maintenance and integrity of historic sites and structures
- Take appropriate action necessary to qualify the state for federal aid
- Provide information on historic sites and structures within Indiana to federal, state, and local governmental agencies, private individuals and organizations
- Advise and coordinate the activities of local historical associations, historic district commissions and other interested groups or persons
- Provide technical and financial assistance to local historical associations and historic district commissions
- Review environmental impact statements as required by federal and state law for actions significantly affecting historic properties.

The division may, in accordance with (IC 14-21-1-13)

- Recommend the purchase, lease, or gift of historic property of archeological importance and make recommendations to the director, council, and commission regarding policies affecting the operation and administration of these sites and structures by the section of historic sites of the division of state museums and historic sites.
- Prepare and review planning and research studies relating to archeology
- Conduct a program of education in archeology, either within the division or in conjunction with an institution of higher education
- Inspect and supervise an archeological field investigation

Cultural Resources Management Plan

The cultural resources management plan was prepared between 1980 and 1989 in Indiana after the National Historic Preservation Act of 1966, which required states receiving Federal preservation funds to develop a plan to guide decisions and policies on preservation. In 1991, the National Park Service (NPS) mandated that each State Historical Preservation Office (SHPO) devise a new plan based upon opinions and suggestions from a wide assortment of groups such as historical and archaeology organizations, citizens, agencies, and private organizations. Then a preservation planning advisory committee was formed in 1993 to insure a wide involvement in drafting the new plan. After much effort the finalized plan was put into action in 1998 and will be the guiding force until 2003 when review and revisions may take place. The plan contains many goals and objectives pertaining to Indiana's cultural resources and may be viewed at <http://www.in.gov/dnr/historic/pdf/plan1.pdf>

Cemeteries and Preservation

Indiana, among many other states, has historic cemeteries and prehistoric burial areas located within state boundaries. Cemeteries, like historic structures, are part of our cultural landscape. The Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (DHPA), is authorized to create a state registry of all cemeteries and burial grounds in each county (IC 14-21-1-13.5). Knowing the locations of cemeteries will allow better protection and aid in the preservation process. Local preservation agencies wanting to help in this matter or needing more information should contact DNR.

Effect of Preservation Requirements on Local Road and Street Projects

Local government road and street officials are required to comply with the National Historic Preservation Act requirements. Specifically important is Section 106 of the National Historic Preservation Act because of its impact on transportation infrastructure planning. The law applies across the board to any federally supported undertaking and planning should take place early in the NEPA process. Section 106 must be complete before the project can be approved. An archaeological evaluation or study must be completed and submitted to the State Historic Preservation Officer (SHPO) for review and concurrence. Historic resources and the impact on them must also be identified through a process which includes:

Preliminary APE Eligibility and Effect Letter. The APE is the area of potential effect. This defines the area in which the proposed project may affect the character or use of historic resources. This includes all alternative locations and locations where:

- The ground may be disturbed
- Elements of the project may be visible or audible
- Activity may result in changes in traffic patterns
- Activity may result in changes in land use patterns
- Direct or indirect effects may be felt

Any historic resources which are candidates for the National Register of Historic Places must be identified.

Types of Effects Which May Occur

- No historic properties affected
- Historic properties present, but not altered
- No effect
- An adverse effect

Examples of Adverse Effects

- Physical destruction
- Alteration
- Removal
- Change in character of the property

- Introduction of visual, atmospheric, or audible elements
- Neglect causing deterioration
- Transfer, lease or sale of property out of federal ownership

The APE Eligibility and Effect Letter is to be submitted to FHWA for signature. The letter should include all technical information about the site, graphics, location, map of the APE. Check the Manual for Environmental Procedure for details.

Section 106 Coordination and Consulting Process

A coordination letter is sent to all Section 106 consulting parties. The letter should include all the technical detail required. Consulting parties receiving coordination should be identified to include: SHPO, Historic Landmarks Foundation of Indiana, the county historian, the county historical society and any relevant local historic groups and Indian tribes. A thirty day comment period is called for.

Agencies to be contacted for Coordination

State Historic Preservation Officer. Contact Department of Natural Resources or the SHPO at: <http://www.in.gov/dnr/historic/>

County Historians and Historical Societies. Contact the Indiana Historical Society at <http://indianahistory.org/Indianahistory.org>

Historic Bridges

Long a contentious issue in Indiana, the issue of public mobility and safety many times confronts the desire to preserve scarce historic resources. During the past decade, the historic bridge preservation effort has become more energetic because iron bridges rapidly disappeared from the Indiana landscape. Earlier removals resulted in the wood or iron structures being destroyed or shipped to the scrap yard rather than to a location where they could continue in some modified service in parks and trails. In spite of the tension between two camps, the effort to preserve historic bridges has resulted in creative thinking about them.

The Rules about Historic Bridges

When a historic bridge is proposed for removal, it must be posted on the INDOT website. A broad range of alternatives are to be considered for federally funded projects where bridges are eligible for or are already included in the National Register of Historic Places. These alternatives include but are not limited to:

- Doing nothing
- Rehabilitation (in the existing location)
- Bypassing the bridge
- Relocating the bridge

National Historic Landmarks

Agencies must maximize planning to minimize harm to National Historic Landmarks. Per section 110 (f) of the National Historic Preservation Act, the Secretary of the Interior is to be invited as one of the consulting parties.

Effects Findings. The classifications include:

No Adverse Effects

No Historic Properties Affected

Historic Properties Affected

If historic properties are found to be affected, avoidance alternatives, mitigation, and minimization actions must all be considered and documented.

Public Involvement. Information must be made available to the public via a public hearing, meeting, or legal notice as appropriate. Section 106 is not complete until public involvement requirements have been met.

Resolution of Adverse Effects. The consulting party will meet to discuss documentation and to resolve outstanding issues. A memorandum of Agreement must be developed in agreement with SHPO, INDOT, and FHWA. All three will review and sign off. Local projects are signed off by a county official. (Responsible Public Official)

SHPO holds the key to agreement. A number of subsequent steps need to take place if SHPO disagrees. The Advisory Council mediates the process and if the adverse effects cannot be resolved, the Council issues formal comment on the undertaking which must be considered. FHWA makes the final decision that the Section 106 process is complete. The process is considered complete when there is no objection from the consulting parties after the process is completed, or after a 30 day comment period expires. The MOA must be signed and the public involvement requirements must be completed.

Preservation Examples



Figure 13-2. Remarkably well-preserved Wabash and Erie canal timbers were unearthed and evaluated during the Lafayette Railroad Relocation Project. The Section 106 Process took over and some of the timbers and many small artifacts were preserved. Some are on display at the Tippecanoe County Museum in a special exhibit opened in 2003.



Hog Creek Bridge

Figure 13-3. This Bridge Got Away. 1898 iron bridge spans Hog Creek in the Eastern part of Scott County near Lexington, Indiana. This type of bedstead truss wood floored bridge was in fairly common use for spanning small streams during the nineteenth and early twentieth century. Replacement programs eliminated these structures one by one. The Hog Creek bridge was replaced by a culvert in 1975.



Figure 13-4. Phil Turley stands at the south end of the Hog Creek Bridge (Photo Credit: Both photos: Jim Turley, 1955)

An Alternative to Destruction

A viable alternative to removal or destruction of an historic wrought iron bridge is renovation and repair to continue the bridge in service. The Local Public Agency engineer should participate in the feasibility and decision making. Due diligence is needed in performing an engineering economic analysis which can be used to justify continuation in service as the more cost effective method than replacement with a new structure. Situational variables will include location, traffic volume and traffic characteristics, and the condition and features of the existing bridge.

Jefferson County Engineer Jim Olson faced such a challenge on a low volume road in northwestern Jefferson County in 1999. The bridge, referred to as the Tobias Bridge, was located on a low volume and very rural road in the northwestern part of the county. Because of its historic design which included unique high and massive abutments, the option of upgrading and repairing the existing Tobias Bridge was subjected to a rigorous economic analysis. The results indicated that in this case, the cost effective alternative was to repair and strengthen the magnificent historic iron bridge, thus preserving it for future service.

Resources concerning the renovation and restoration of iron bridges are available from the Historic Landmarks Foundation which has for a number of years encouraged LPA's to examine renovation as an alternative to replacement. In September of 2001 the Foundation held its second Indiana Bridge Restoration Workshop at Conner Prairie. The workshop included an examination of alternatives and a workshop which included examples of techniques for restoring and repairing the wrought iron components of these structures. Contact the Indiana Historic Landmarks Foundation, Indiana Division of FHWA and INDOT for information on this and future workshops.

The State Environment of Environment

The focus of discussion will be narrowed to environmental laws and permits applicable to jobs which involve pollution of streams and rivers and otherwise disturbing waterways.

All levels are required to comply with these regulations. Local Public Agencies and private entities are required to meet the compliance requirements through the permitting process administered by a number of agencies. Examples of tasks or operations which probably require permits include excavation required for buildings, bridges, storm sewers, sanitary sewers, sanitary sewer treatment facilities and landfills. A bridge or county road widening project can be added to a long list. Knowledge of this permitting environment is essential.

Organizations. A number of agencies are involved in protecting the environment in Indiana. Paramount is the Indiana Department of Environmental Management (IDEM). See **IC 13-13-1-1**. Others with environmental responsibilities include the U.S. Army Corps of Engineers (USACE), Indiana Department of Natural Resources (DNR), U.S. Environmental Protection Agency (EPA) and the U.S. Natural Resources Conservation Service (NRCS). These organizations and agencies perform roles protecting the environment and providing public and local assistance.

The Permitting Environment. Multiple requirements for permits exist. This discussion will focus attention on permits applicable to dredging, excavation, or fill materials within wetlands or other bodies of water. IDEM and the U.S. Army Corps of Engineers provide certifications and permits which deal specifically with these issues. Two of the most popular are water quality certification offered through IDEM and the corps of engineers section 404 permit.

Knowing When a Permit is Required

The IDEM permit guide is on line at <http://www.in.gov/idem/guides/permit/water/watercerts.pdf>. The guide states that "Any person who wishes to place fill materials, excavate or dredge, or mechanically clear (use heavy equipment) within a wetland, lake, river, or stream must first apply to the Corps of Engineers for a Section 404 permit. If the Corps of Engineers decides a Section 404 permit is needed, then the person or agency also must obtain a Section 401 Water Quality Certification from IDEM."

U. S. Army Corps of Engineers Section 404 Permit

Since 1890 the U.S. Army Corps of Engineers has had a major role regulating activities pertaining to the nation's water. Initially navigation issues were the focus of attention. In 1968 with the addition of new legislation, this focus was broadened to include water quality control. The program now provides consideration of all public concerns – environment, social and economic. As a result of the Clean Water Act (CWA), the program's responsibilities include protecting water quality and thus the evolution of Section 404. Section 404's main purpose is to insure that the physical, biological and chemical quality of our nation's water is protected.

Typical activities requiring Section 404 permits include but are not limited to:

- Depositing of fill or dredged materials in waters of the U.S. or adjacent wetlands
- Site development fill for residential, commercial, or recreational developments
- Construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs
- Placement of riprap and road fills

Any person, firm, or agency (including Federal, state, and local public agencies) planning to work in navigable waters of the United States must first obtain the appropriate permit from the Corps of Engineers.

IDEM Section 401 Water Quality Certification Process

The Clean Water Act states in Section 401 that "Any applicant for a federal license or permit to conduct any activity that may result in a discharge into waters of the United States to first obtain a water quality certification (or waiver) from the state in which the discharge originates." Any person or agency interested in obtaining water quality certification must assure IDEM that the activity will comply with standards set forth in 327 IAC 2 and may not proceed until appropriate certification is received.

Water quality certification is a license which is stated under the Indiana Administrative Orders and Procedures Act (IAOPA). To assure that the job at hand complies with applicable law, certifications contain conditions which applicants must follow and all water quality certifications are subject to administrative appeals **IC 4-21.5-3-5**. Conditions include but are not limited to minimization of impacts, compensatory mitigation for wetland impacts, establishment of buffer zones around waterbodies, prohibitions on work during certain time periods, stormwater and erosion control measures, conservation easement, and water quality studies.

The time needed to obtain certification varies, but according to the CWA, states have up to one year to review applications for water quality certification. Although, if given all necessary information, IDEM can usually review and make a decision on an application within 60 days of receiving it. Online application forms for water quality certification may be found at <http://www.in.gov/idem/water/planbr/401/WQsApplication2.PDF>. If, however, IDEM fails to act within one year of receiving an application, the certification requirements are automatically waived.

The certification process is detailed and takes time. IDEM recommends that any person or agency interested in water quality certification follow these steps:

- Early Coordination
- Submit Application
- Public Notice
- IDEM Reviews Application
- Site Investigation
- Final Decision

NPDES Phase II – Stormwater Program

The National Pollution Discharge Elimination System (NPDES) was put into existence by the Clean Water Act in 1972. Over all this system places limits on the amount of pollutants that may be discharged to waters of the state by each discharger. Limits were set based upon protective levels for aquatic life and human health. In 1999, the Stormwater Phase II final rule was published in the Federal Register. This addition requires a NPDES permit for two classes of storm water dischargers on a nationwide basis. The two classes are regulated municipal separate storm sewer systems (MS4s) located in "urbanized areas" as defined by the Bureau of the Census and operators of construction activities that disturb equal to or greater than 1 and less than 5 acres of land. LPA's need be aware NPDES permits exist and take appropriate measures to ensure that compliance is met.

Questions and Answers About Preservation and Environment

Q: Will listing my property on the National Register of Historic Places or the Indiana Register of Historic Sites and Structures prohibit me from altering my property?

Answer. Neither the State nor National Register has any stipulations limiting privately funded projects on listed or eligible buildings. If the owner is seeking the 20% investment tax credit, or is using federal or state funding or assistance to rehabilitate a building, they should seek approval from the Division. The owner risks loss of the state or federal funding or credit if the project is done without approval.

Q: Legal stipulations cover some historic district areas requiring government approval for exterior changes or painting, regardless of whether the funds used are private or public. Why aren't National or State Register listed districts covered by these guidelines as well?

Answer. There are three types of historic designation in Indiana: federal (National Register of Historic Places); state (Indiana Register of Historic Sites and Structures); and local. The strongest type of protection, called the local historic district, is administered by local government only under Indiana law. Local designation does cover all exterior changes to a property, regardless of the source of funding. Indiana state or the federal government cannot enact such a measure, because it is not enabled by the constitution. Cities, counties, towns, or villages can enact a local ordinance with historic preservation measures modeled after private subdivision regulations. In some cases, the neighborhood may be granted National Register listing either before or after local designation, so the designations may overlap.

Q: Are archaeological sites and human burial sites protected in Indiana?

Answer. YES. The Indiana Historic Preservation Act (IC 14-21-1), as amended by Public Law 175 in 1989, provides protection for archaeological sites and historic burial sites regardless of their location on state or private lands. All archaeological sites dating before December 11, 1816, are protected under this act. Human burial sites are afforded protection under IC 14- 21-1 and IC 23-14 (Indiana General Cemetery Act).

Q: What is an artifact?

Answer. An "artifact" is defined in IC 14-21-1 as "an object made or shaped by human workmanship before December 11, 1816".

Q: Is it illegal to surface collect artifacts?

Answer. It is not illegal to collect artifacts from the surface of sites as long as the collector has the landowner's permission to be on the property and collect artifacts.

Q: If I surface collect artifacts, who do they belong to?

Answer. Artifacts and materials belong to the property owner unless he or she assigns ownership of the materials to another party.

Q: Is it legal to disturb the ground for the purpose of obtaining artifacts or human remains?

Answer. IC 14-21-1, as amended by Public Law 175 in 1989, makes it clear that no person can affect archaeological or historical burial sites without an approved permit from the Indiana Department of Natural Resources (IDNR).

Q: If I see or know of looting of an archaeological site, whom should I contact?

Answer. Any disturbance or looting of an archaeological site should be reported immediately to either local law enforcement officials (who will then contact Conservation Officers) or the Division of Historic Preservation and Archaeology.

Q: What should I do if I discover human remains or know of disturbance to a human burial site?

Answer. Any discovery of human remains or possible human remains should be left undisturbed and reported to the IDNR, Division of Law Enforcement, or the IDNR, Division of Historic Preservation and Archaeology as soon as possible.

Q: What happens if a burial or archaeological site is accidentally discovered or encountered by activities such as earthmoving or construction?

Answer. The individual finding the site or burial must stop immediately and report the discovery to the IDNR within two working days. If they do not report the find or keep disturbing the site, they are breaking the law. When the discovery is reported to IDNR, law enforcement officers and professional archaeologists investigate the discovery and decide on a course of action to protect the site.

Environment and Preservation Statutes

IC 4-21.5-3-5

Notice required; certain licensing and other decisions; persons who must be notified; contents; effectiveness of order; stays

Sec. 5. (a) Notice shall be given under this section concerning the following:

(1) The grant, renewal, restoration, transfer, or denial of a license not described by section 4 of this chapter.

(2) The approval, renewal, or denial of a loan, grant of property or services, bond, financial guarantee, or tax incentive.

(3) The grant or denial of a license in the nature of a variance or exemption from a law.

(4) The determination of tax due or other liability.

(5) A determination of status.

(6) Any order that does not impose a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest.

(b) When an agency issues an order described in subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

(3) Each competitor who has applied to the agency for a mutually exclusive license, if issuance is the subject of the order and the competitor's application has not been denied in an order for which all rights to judicial review have been waived or exhausted.

(4) Each person who has provided the agency with a written request for notification of the order, if the request:

(A) describes the subject of the order with reasonable particularity; and

(B) is delivered to the agency at least seven (7) days before the day that notice is given under this section.

(5) Each person who has a substantial and direct proprietary interest in the subject of the order.

(6) Each person whose absence as a party in the proceeding concerning the order would deny another party complete relief in the proceeding or who claims an interest related to the subject of the order and is so situated that the disposition of the matter, in the person's absence, may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any other person who is a party to a proceeding concerning the order subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice required by subsection (a) must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) A brief explanation of how the person may obtain notices of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings without intervening in the proceeding, if a petition for review is granted under section 7 of this chapter.

(4) Any other information required by law.

(d) An agency issuing an order under this section or conducting an administrative review of the order shall give notice of any:

(1) prehearing conference;

(2) preliminary hearing;

(3) hearing;

(4) stay; or

(5) order disposing of all proceedings; concerning the order to a person notified under subsection (b) who requests these notices in the manner specified under subsection (c)(3).

(e) If a statute requires an agency to solicit comments from the public in a nonevidentiary public hearing before issuing an order described by subsection (a), the agency shall announce at the opening and the close of the public hearing how a person may receive notice of the order under subsection (b)(4).

(f) If a petition for review and a petition for stay of effectiveness of an order described in subsection (a) has not been filed, the order is effective fifteen (15) days (or any longer period during which a person may, by statute, seek administrative review of the order) after the order is served. If both a petition for review and a petition for stay of effectiveness are filed before the order becomes effective, any part of the order that is within the scope of the petition for stay is stayed for an additional fifteen (15) days. Any part of the order that is not within the scope of the petition is not stayed. The order takes effect regardless of whether the persons described by subsection (b) (5) or (b)(6) have been served. An agency shall make a good faith effort to identify and notify these persons, and the agency has the burden of persuasion that it has done so. The agency may request that the applicant for the order assist in the identification of these persons. Failure to notify any of these persons is not grounds for invalidating an order, unless an unnotified

person is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the unnotified person.

(g) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of a proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license.

(h) On the motion of any party or other person having a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued before or after the order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties, any person who has a pending petition for intervention in the proceeding, and any person who has requested notice under subsection (d). It must include a statement of the facts and law on which it is based.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.4.

IC 13-13-1-1

Establishment

Sec.1. The department of environmental management is established.

As added by P.L.1-1996, SEC.3.

IC 14-21-1

Chapter 1. Division of Historic Preservation and Archeology

IC 14-21-1-11

Administration and development of programs and policies

Sec. 11. The division of historic preservation and archeology shall administer and develop the programs and policies established by this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-12

Duties of division

Sec. 12. The division shall do the following:

(1) Develop a program of historical, architectural, and archeological research and development, including continuing surveys, excavations, scientific recording,

interpretation, and publication of the state's historical, architectural, and archeological resources.

(2) Prepare a preservation plan for the state that establishes planning guidelines to encourage the continuous maintenance and integrity of historic sites and historic structures. However, the plan is not effective until the plan has been:

(A) presented to the council for review and comment; and

(B) approved by the review board after public hearing.

(3) Undertake the action necessary to qualify the state for participation in sources of federal aid to further the purposes stated in subdivisions (1) and (2).

(4) Provide information on historic sites and structures within Indiana to federal, state, and local governmental agencies, private individuals, and organizations.

(5) Advise and coordinate the activities of local historical associations, historic district commissions, historic commissions, and other interested groups or persons.

(6) Provide technical and financial assistance to local historical associations, historic district commissions, historic commissions, and other interested groups or persons.

(7) Review environmental impact statements as required by federal and state law for actions significantly affecting historic properties.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-13

Powers of division

Sec. 13. The division may do the following:

(1) Recommend the purchase, lease, or gift of historic property of archeological importance and make recommendations to the director, council, and commission regarding policies affecting the operation and administration of these sites and structures by the section of historic sites of the division of state museums and historic sites.

(2) Prepare and review planning and research studies relating to archeology.

(3) Conduct a program of education in archeology, either within the division or in conjunction with an institution of higher education.

(4) Inspect and supervise an archeological field investigation authorized by this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-13.5

Survey and registry of Indiana burial grounds

Sec. 13.5. (a) The division may conduct a program to survey and register in a registry of Indiana cemeteries and burial grounds that the division establishes and maintains all cemeteries and burial grounds in each county in Indiana. The division may conduct the program alone or by entering into an agreement with one (1) or more of the following entities:

(1) The Indiana Historical Society established under IC 23-6-3.

(2) A historical society as defined in IC 20-5-17.5-1(a).

(3) The Historic Landmarks Foundation of Indiana.

(4) A professional archeologist or historian associated with a college or university.

(5) A township trustee.

(6) Any other entity that the division selects.

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director considers appropriate. The director shall use a gift or grant received under this subsection:

(1) to carry out subsection (a); and

(2) according to the terms of the gift or grant.

(c) At the request of the director, the auditor of state shall establish a trust fund for purposes of holding money received under subsection (b).

(d) The director shall administer a trust fund established by subsection (c). The expenses of administering the trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the trust fund established by subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the trust fund at the end of a state fiscal year does not revert to the state general fund.

(g) Nothing in this section may be construed to authorize violation of the confidentiality of information requirements of 16 U.S.C. 470(w) and 16 U.S.C. 470 (h) (h).

(h) The division may record in each county recorder's office the location of each cemetery and burial ground located in that county.

As added by P.L.46-2000, SEC.8. Amended by P.L.177-2001, SEC.2.

Selected Water Quality and Permitting Indiana Administrative Code Sections

Note: The volume of the IAC precludes using all sections in this manual. Users are encouraged to go directly to Access Indiana web site to read the complete code sections.

ARTICLE 2. WATER QUALITY STANDARDS

Rule 1. Water Quality Standards Applicable to All State Waters Except Waters of the State Within the Great Lakes System

327 IAC 2-1-1 Applicability of rule

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 1. The water quality standards established by this rule shall apply to all waters of the state except waters of the state within the Great Lakes system regulated under 327 IAC 2-1.5. (*Water Pollution Control Board; 327 IAC 2-1-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 579; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1018; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1347*)

327 IAC 2-1-1.5 Water quality goals

Authority: IC 13-1-3-7; IC 13-7-1-1; IC 13-7-7-5

Affected: IC 13-7-4-1

Sec. 1.5. The goal of the state is to restore and maintain the chemical, physical, and biological integrity of the waters of the state. In furtherance of this primary goal:

(1) it is the public policy of the state that the discharge of toxic substances in toxic amounts be prohibited; and

(2) it is the public policy of the state that the discharge of persistent and bioconcentrating toxic substances be reduced or eliminated. (*Water Pollution Control Board; 327 IAC 2-1-1.5; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1018*)

327 IAC 2-1-2 Maintenance of surface water quality standards

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-1; IC 13-18-4; IC 13-30-2-1

Sec. 2. The following policies of nondegradation are applicable to all surface waters of the state:

(1) For all waters of the state, existing beneficial uses shall be maintained and protected. No degradation of water quality shall be permitted which would interfere with or become injurious to existing and potential uses.

(2) All waters whose existing quality exceeds the standards established herein as of February 17, 1977, shall be maintained in their present high quality unless and until it is affirmatively demonstrated to the commissioner that limited degradation of such waters

is justifiable on the basis of necessary economic or social factors and will not interfere with or become injurious to any beneficial uses made of, or presently possible, in such waters. In making a final determination under this subdivision, the commissioner shall give appropriate consideration to public participation and intergovernmental coordination.

(3) The following waters of high quality, as defined in subdivision (2), are designated by the board to be an outstanding state resource and shall be maintained in their present high quality without degradation:

(A) The Blue River in Washington, Crawford, and Harrison Counties, from river mile 57.0 to river mile 11.5.

(B) The North Fork of Wildcat Creek in Carroll and Tippecanoe Counties, from river mile 43.11 to river mile 4.82.

(C) The South Fork of Wildcat Creek in Tippecanoe County, from river mile 10.21 to river mile 0.00.

(4) Any determination made by the commissioner in accordance with Section 316 of the Clean Water Act concerning alternative thermal effluent limitations will be considered to be consistent with the policies enunciated in this section. (*Water Pollution Control Board; 327 IAC 2-1-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 579; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1018; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2003; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1346*)

327 IAC 2-1-3 Surface water use designations; multiple uses

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 3. (a) The following water uses are designated by the water pollution control board:

(1) Surface waters of the state are designated for full-body contact recreation as provided in section 6(d) of this rule.

(2) All waters, except as described in subdivision (5), will be capable of supporting a well-balanced, warm water aquatic community and, where natural temperatures will permit, will be capable of supporting put-and-take trout fishing. All waters capable of supporting the natural reproduction of trout as of February 17, 1977, shall be so maintained.

(3) All waters which are used for public or industrial water supply must meet the standards for those uses at the points where the water is withdrawn. This use designation and its corresponding water quality standards are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.

(4) All waters which are used for agricultural purposes must, as a minimum, meet the standards established in section 6(a) of this rule.

(5) All waters in which naturally poor physical characteristics (including lack of sufficient flow), naturally poor chemical quality, or irreversible man-induced conditions, which came into existence prior to January 1, 1983, and having been established by use attainability analysis, public comment period, and hearing may qualify to be classified for limited use and must be evaluated for restoration and upgrading at each triennial review of this rule. Specific waters of the state designated for limited use are listed in section 11(a) of this rule.

(6) All waters which provide unusual aquatic habitat, which are an integral feature of an area of exceptional natural beauty or character, or which support unique assemblages of aquatic organisms may be classified for exceptional use. Specific waters of the state designated for exceptional use are listed in section 11(b) of this rule.

(b) Where multiple uses have been designated for a body of water, the most protective of all simultaneously applicable standards will apply. (*Water Pollution Control Board; 327 IAC 2-1-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 580; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1019; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1348*)

327 IAC 2-1-4 Mixing zone guidelines

Authority: IC 13-1-3-7; IC 13-7-7-5

Affected: IC 13-1-3-7; IC 13-7-7-5

Sec. 4. (a) All surface water quality standards in this rule, except those provided in section 6(a)(1) of this rule, are to be applied at a point outside of the mixing zone to allow for a reasonable admixture of waste effluents with the receiving waters.

(b) Due to varying physical, chemical, and biological conditions, no universal mixing zone may be prescribed. The commissioner shall determine the mixing zone upon application by the discharger. The applicability of the guideline set forth in subsection (c) will be on a case-by-case basis and any application to the commissioner shall contain the following information:

(1) The dilution ratio.

(2) The physical, chemical, and biological characteristics of the receiving body of water.

(3) The physical, chemical, and biological characteristics of the waste effluent.

(4) The present and anticipated uses of the receiving body of water.

(5) The measured or anticipated effect of the discharge on the quality of the receiving body of water.

(6) The existence of and impact upon any spawning or nursery areas of any indigenous aquatic species.

(7) Any obstruction of migratory routes of any indigenous aquatic species.

(8) The synergistic effects of overlapping mixing zones or the aggregate effects of adjacent mixing zones.

(c) The mixing zone should be limited to no more than one-fourth (1/4) (twenty-five percent (25%)) of the cross-sectional area and/or volume of flow of the stream, leaving at least three-fourths (3/4) (seventy-five percent (75%)) free as a zone of passage for aquatic biota nor should it extend over one-half (1/2) (fifty percent (50%)) of the width of the stream.

(d) Based on consideration of aquatic life or human health effects, the commissioner may deny a mixing zone for a discharge or certain substances in a discharge.

(e) Notwithstanding other subsections of this section, no mixing zone shall be allowed for discharges to lakes except for those consisting entirely of noncontact cooling water which meet the requirements set forth in Section 316(a) of the Federal Water Pollution Control Act of 1972. (*Water Pollution Control Board; 327 IAC 2-1-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 580; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1020*)

327 IAC 2-1-5 Exception to quality standards applicability

Authority: IC 13-1-3-7; IC 13-7-7-5

Affected: IC 13-1-3-7; IC 13-7-7-5

Sec. 5. All surface water quality standards in section 6 of this rule, except those provided in section 6(a)(1) of this rule will cease to be applicable when the stream flows are less than the average minimum seven (7) consecutive day low flow which occurs once in ten (10) years. This determination will be made using Low-Flow Characteristics of Indiana Streams, 1983, United States Department of the Interior, Geological Survey, or any additional information compiled on a comparable basis. (*Water Pollution Control Board; 327 IAC 2-1-5; filed Sep 24, 1987, 3:00 p.m.: 11 IR 581; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1020*)

327 IAC 2-1-12 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 12. The following materials have been incorporated by reference into this rule. Each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

(1) Clean Water Act (CWA) 33 U.S.C. 1251 et seq. in effect December 16, 1996, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(2) Code of Federal Regulations (40 CFR 136) in effect December 16, 1996, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 2-1-12; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1363; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376*)

A Guide to Road and Street References

Introduction

It takes just a little time to understand the organization and content of these resources. This knowledge will allow the local road and street official to do some of their own reading to gain insight when discussing issue with legal counsel. This appendix attempts to do a little of this. Added is Figure A-1 to provide a quick glance at the resources reviewed here. The references are found in Federal Depository Libraries located throughout Indiana. Information about these libraries is included in this appendix. Also, most are now found online at the Government Printing Office web site: <http://www.gpoaccess.gov/> for the United States Code and other U.S. Government resources, and at the Indiana General Assembly web site at <http://www.state.in.us/legislative> for the Indiana Code. Refer also to the bibliography at the end of the handbook.

Legal and Administrative Resources

The United States Code

The United States Code (U.S.C.), published by the Office of the Law Revision Counsel of the House of Representatives, contains general and permanent laws in force in the United States as of a specified date. The U.S.C. is re-published every six years and is supplemented yearly. Copies of the U.S.C. can be found in Federal Depository Libraries. The U.S.C. is available online at: <http://www.gpoaccess.gov/uscode/index.html>. An example of an index citation is: 46 § 747, which refers to Title 46, Section 747. By checking first under very general headings and then moving to more specific topics, it is easy to pinpoint the required statute. The supplements to the Code are also indexed in the same general manner.

The Code of Federal Regulations

The Code of Federal Regulations (CFR) contains general and permanent rules established by executive departments and federal government agencies. The CFR is divided into 50 titles, which are further divided into chapters and parts. Each chapter contains regulations for a single agency or department and the parts contain the regulations issued by that agency.

five sections offering different ways to access information. The Subject Index is the easiest to use since it offers general headings in bold caps (much like the index to the U.S.C.), followed by more specific terms along with citations. Each regulation is cross-referenced under many different general headings, making it easier to find specific material. Each entry in the index is cited by title chapter and part. For example "T25 Ch1-H Pt720-B" refers to "Title 25, Chapter 1, Subchapter H, Part 720, Subpart B." The CFR is available online at GPO Access. (<http://www.gpoaccess.gov/cfr/index.html>)

The Federal Register

The Federal Register, published daily (Monday through Friday), is used to circulate new (proposed) Federal Agency regulations for comment, and publishes final versions of regulations in the interim between CFR publications. Presidential proclamations, Executive Orders, and other Federal Agency documents and legal notices of public concern are also provided.

The Federal Register is indexed monthly in cumulative form. Each issue also contains a list of the CFR parts affected during the month. Also published monthly is the LSA (List of CFR Sections affected). The LSA lists the Federal Register page number of the latest amendment to any rule. The Federal Register is also available at GPO Access at: <http://www.gpoaccess.gov/fr/index.html>

The Indiana Code

The Indiana Code (IC) is published every six years. The IC comprises 36 major divisions of laws called titles. For example, Title 8 contains laws about Transportation and Public Utilities. Each title is divided into articles, chapters and sections. Each volume contains a list of titles as well as a table of contents. The Indiana Code is now available online for quick access. Go to: <http://www.state.in.us/legislative/ic/code/>

The Indiana Administrative Code

The Indiana Administrative Code (IAC) is organized in much the same way as the Indiana Code, but with a more complex system of titles. The IAC contains administrative policies issued by the numerous Indiana Government rule-making agencies.

The index to the CFR is published annually. This index contains

ITEM	CONTENT	ORGANIZATION	SAMPLE CITATION	USE WITH	POSSIBLE USE
U.S. Code (USC)	Laws of the United States	Title, Chapter and Section	42 U.S.C. §4332 (1982)	CFR and Federal Register	Basic Resource background information
Code of Federal Regulations (CFR)	Federal Agency Rules and Regulations	Title, Chapter and Part	23 CFR Part 655	U.S.C. and Federal Register	Administration and management of departments and agencies. Procedures and guidelines.
The Federal Register	Daily publication of rules, proposed rules and notices	Department, Agency and affected CFR. Example: DOT, FWHA, 23 CFR Part 655	23 CFR Part 655	U.S.C. and CFR	Near real time updates for public officials and legal personnel.
Indiana Code (IC)	Codification of the Laws of Indiana	Title, Article, Chapter, Section	IC 8-16-3.1-1	Indiana Register	Source of Indiana rules that affect roads and streets.
Indiana Administrative Code (IAC)	Implementation of statutes as rules and procedures for state agencies in carrying out their legislative mandate	10 Categories, Title, Article, Chapter, Section	120 IAC 1-3-6	INDOT implementation procedures. Some INDOT publications.	INDOT rules, regulations and procedures as implemented by the State of Indiana.
Indiana Register	Rules recently proposed or approved	Volumes, as received	2 IR 37	Indiana Code	Latest revisions of Indiana law or administrative rules
West's and Burn's Indiana Statutes	Annotated laws of Indiana with relevant notes	Same as the Indiana Code	Same as the Indiana Code	Indiana Code and Indiana Law Encyclopedia	Notes concerning decisions that accompany basic statutes
West's Indiana Law Encyclopedia	Summary of Indiana law with court decisions	Arranged by the Titles of the Law	8 I.L.E. §371	Indiana Code, West's and Burn's Statutes	Detailed background on common law
McQuillin's Law of Municipal Corporations	Laws concerning city government management	Chapters dealing with distinct topics	Mayor's Powers §1.13	N/A	Reference to laws concerning city government

Figure A-1.

One hundred titles make up the IAC. Included are administrative policies of the various state agencies organized by article, chapter, and section. The 100 titles are grouped into ten categories.

Each volume of the IAC contains a Table of Contents listing all the titles and their location. A general index is also provided. The index refers to the text by the full IAC citation. Any series of three or more entries will be cited in this form: 120 IAC 3-3-1 to 120 IAC 3-3-16. The main headings are bold faced and capitalized. Cross references under the main headings refer to other relevant citations in the index. Supplements to the IAC are published regularly and follow the same general format.

The Indiana Administrative Code is also available online at: <http://www.state.in.us/legislative/iac/>

The Indiana Register

The Indiana Register is a monthly publication of the Indiana Legislative Council. It provides a complete text of rules and amendments to rules recently proposed and/or approved, as well as other new documents, such as executive orders and legal notices issued by state departments or agencies. A topical index lists page locations. A list of the affected rules is also provided. These references are printed quarterly as cumulative tables.

Monthly issues are organized into annual volumes dating from 1978 to the present. The Register is a companion to the Indiana Administrative Code. Users should consult the IAC, the current cumulative supplement to the IAC, and the current issues of the Indiana Register to determine current rules of the state agencies. Recent issues of the Indiana Register are available online at: <http://www.in.gov/legislative/register/index-27.html>.

West's and Burn's Annotated Indiana Statutes

These two sets of annotated statutes are published by The West Publishing Company (West's) and the Michie Company (formerly Michie Bobbs – Merrill Company). These publications provide complete source material concerning the Indiana statutes. Both contain the entire Indiana Code as well as references to the original acts and amendments. Both publications also contain compiler's notes, law journal citations, relevant court decisions and opinions of the Attorney General pertaining to specific statutes. Both publications offer a variety of tables to aid the user in finding specific statutes and each publication is supplemented annually. These publications are generally available in Federal Depository Libraries and at their respective publishing house web sites.

West's Indiana Law Encyclopedia

Published by the West Publishing Company, this encyclopedia is another source of Indiana law. It contains much of the same information as the West's Annotated Code. The Encyclopedia does not include the compiler's notes, but does have references to applicable federal court decisions. The encyclopedia is a summary discussion of the law and contains references to the original material.

McQuillin's Law of Municipal Corporations

This work contains a discussion of municipal law. Volume 1 contains a complete table of all chapters. This table lists detailed contents, which is repeated at the beginning of the respective chapters. The pages of McQuillin's are conveniently numbered to indicate the section discussed on that page. The McQuillin's index uses descriptive headings and major headings are printed in bold faced type followed by distinct subjects. Citations to the volumes are by chapter and section number. Cumulative supplements to McQuillin's are provided annually.

Federal Depository Libraries in Indiana

Federal publications and other information products are made available for free public use in Federal depository libraries throughout the United States. In addition to the publications, trained librarians are available to assist in their use. This list of Indiana's designated Federal Depository Libraries is from the U.S. Government Printing Office web site. Users should go directly there for updated information. <http://www.gpoaccess.gov/libraries.html>

Anderson University
Robert A. Nicholson Library
1100 East 5th Street
Anderson, IN 46012-3495

Phone: (765) 641-4280
Fax: (765) 641-3850

Indiana University, Bloomington
Main Library
1320 East 10th Street
Bloomington, IN 47405-3907

Phone: (812) 855-3722
Fax: (812) 855-3460
<http://www.indiana.edu/~libgpd/>

Indiana University, Bloomington
School of Law Library
211 South Indiana Avenue
Bloomington, IN 47405-7001

Phone: (812) 855-2938
Fax: (812) 855-7099
<http://www.law.indiana.edu/lib/netres/govt/govehome.html>

Wabash College
Lilly Library
301 West Wabash Avenue
Crawfordsville, IN 47933-0352

Phone: (765) 361-6443
Fax: (765) 361-6295

Evansville-Vanderburgh Public Library
Central Library
22 SE 5th Street
Evansville, IN 47708-1694

Phone: (812) 428-8218
Fax: (812) 428-8215

University of Southern Indiana
David L. Rice Library
8600 University Boulevard
Evansville, IN 47712-3595

Phone: (812) 464-1907
Fax: (812) 465-1693
<http://www.usi.edu/library/govtdoc.asp>

Allen County Public Library
200 East Berry Street
Fort Wayne, IN 46801-2270

Phone: (260) 421-1215
Fax: (260) 421-1386
http://www.acpl.lib.in.us/Law_Government/law_government.html

Indiana University-Purdue University,
Fort Wayne/Helmke Library
2101 East Coliseum Boulevard
Fort Wayne, IN 46805-1499

Phone: (260) 481-6506
Fax: (260) 481-6509
<http://www.lib.ipfw.edu/581.0.html>

Gary Public Library
Main Library
220 West 5th Avenue
Gary, IN 46402-1270

Phone: (219) 886-2484
Fax: (219) 881-4185

Indiana University, Northwest Library
3400 Broadway
Gary, IN 46408-1197

Phone: (219) 980-6608
Fax: (219) 980-6558
<http://www.iun.edu/~lib/govdocs.htm>

DePauw University
Roy O. West Library
400 South College Avenue
Greencastle, IN 46135-1641

Phone: (765) 658-4420
Fax: (765) 658-4445
<http://www.depauw.edu/library/govdocs/>

Hammond Public Library
564 State Street
Hammond, IN 46320-1532

Phone: (219) 931-5100: 333
Fax: (219) 852-2222
<http://www.hammond.lib.in.us/govdocs.htm>

Hanover College
Duggan Library
121 Scenic Drive
Hanover, IN 47243-0287

Phone: (812) 866-7165
Fax: (812) 866-7172

Huntington College
RichLyn Library
2303 College Avenue
Huntington, IN 46750-1299

Phone: (260) 359-4062
Fax: (260) 358-3698

Butler University
Irwin Library
4600 Sunset Avenue
Indianapolis, IN 46208-3487

Phone: (317) 940-9235
Fax: (317) 940-8039
<http://butler.edu/library/geninfo/govdocs.html>

REGIONAL- Indiana State Library
140 North Senate Avenue
Indianapolis, IN 46204-2296

Phone: (317) 232-3678
Fax: (317) 232-3728

Indiana Supreme Court
Law Library
316 State House
Indianapolis, IN 46204-2788

Phone: (317) 232-2557
Fax: (317) 232-8372

Indiana University Purdue University Indianapolis
University Library
755 West Michigan Street
Indianapolis, IN 46202-5195

Phone: (317) 274-0469
Fax: (317) 274-0492
<http://www.ulib.iupui.edu/subjectareas/gov/govdocs.html>

Indiana University School of Law
Ruth Lilly Law Library
530 West New York Street
Indianapolis, IN 46202-3225

Phone: (317) 274-4026
Fax: (317) 274-8825

Indianapolis-Marion County Public Library
Central Library
202 N. Alabama Street
Indianapolis, IN 46204

Phone: (317) 269-1700
Fax: (317) 269-1820

Indiana University, Kokomo Library
2300 South Washington Street
Kokomo, IN 46904-9003

Phone: (765) 455-9521
Fax: (765) 455-9276
<http://www.iuk.edu/library/govdocs.html>

Ball State University
Alexander M. Bracken Library
2000 University Avenue
Muncie, IN 47306-0160

Phone: (765) 285-1110
Fax: (765) 285-2644
<http://www.bsu.edu/libraries/collections/govpubs/index.html>

Indiana University, Southeast Library
4201 Grantline Road
New Albany, IN 47150-6405

Phone: (812) 941-2489
Fax: (812) 941-2493
http://www.ius.edu/Library/government_publications.html

University of Notre Dame
Kresge Law Library
Notre Dame, IN 46556-0535

Phone: (574) 631-5664
Fax: (574) 631-6371

University of Notre Dame
Theodore M. Hesburgh Library
Notre Dame, IN 46556-5629

Phone: (574) 631-6043
Fax: (574) 631-8887
<http://www.nd.edu/~docctr/govdocs.htm>

Saint Joseph College
Robinson Memorial Library
Highway 231
Rensselaer, IN 47978-0990

Phone: (219) 866-6210
Fax: (219) 866-6305

Earlham College
Lilly Library
801 National Road West
Richmond, IN 47374-4095

Phone: (765) 983-1287
Fax: (765) 983-1304
<http://www.earlham.edu/~libr/more/government.htm>

Morrisson-Reeves Library
80 North 6th Street
Richmond, IN 47374-3079

Phone: (765) 966-8291
Fax: (765) 962-1318

Indiana University, South Bend
Franklin D. Schurz Library
South Bend, IN 46634-7111

Phone: (574) 237-4442
Fax: (574) 237-4472
<http://www.iusb.edu/~libg/govpubs.html>

Indiana State University
Cunningham Memorial Library
Terre Haute, IN 47809-2799

Phone: (812) 237-2626
Fax: (812) 237-3376
<http://library.indstate.edu/level1.dir/gov.dir/govhome.html>

Valparaiso University
Law Library
656 South Greenwich
Valparaiso, IN 46383-6493

Phone: (219) 465-7866
Fax: (219) 465-7917

Valparaiso University
Moellering Memorial Library
1509 Chapel Drive
Valparaiso, IN 46383-6493

Phone: (219) 464-6890
Fax: (219) 464-5792
<http://www.valpo.edu/library/govdocs/index.html>

Purdue University
HSSE Library
128 Memorial Mall
West Lafayette, IN 47907-2034

Phone: (765) 494-2831
Fax: (765) 494-9007
<http://www.lib.purdue.edu/govdocs/>

Source: U. S. Government Printing Office, 2004.
Accessed 12 February 2004
<http://www.gpoaccess.gov/libraries.html>

Guide to Using the Internet

The establishment and explosive growth of the Internet dramatically increased the quantity and expedited the availability of information needed to manage and administer the local road and street effort. It creates a virtual library on our desk. It is available nearly any time of day, and restricted only by the capability of the equipment available. As long as we realize our responsibility to question and verify, it is possible to answer a plethora of questions with this important resource. We use a question and answer format here, to familiarize you with the basics.

Q: What is the Internet?

Answer: The Internet we know today originated from a network designed by the U.S. Department of Defense in the late 1960s. A network known as the National Science Foundation for communication among research organizations designed NSFNet in 1986. After commercial restrictions were removed in 1991, various commercial access options and services were developed and people began to refer to NSFNet as the "Internet". It can now be accessed by thousands of users across the globe.

The Internet is made up of individual local networks operated by scientific organizations, businesses, universities, government and the military. There is no centralized management and no single network in which the Internet operates. Users may think of the Internet as a "toolbox" for electronic communication and information. This "toolbox" houses resources that allow users to communicate with other people and access vast quantities of information electronically. A user does not need to understand all details of how the Internet operates in order to use it, but the greater understanding assists in maximizing the options available.

Q: How does the Internet Work?

Answer: Internet procedures (IP) and standard protocols are provided by a variety of groups to insure structured growth. These groups also educate people on proper use and assign network IP addresses and domain names. A laboratory for Computer Science at MIT called the World Wide Web Consortium develops standards for the WWW and collaborates with multiple organizations across the world. Separately funded local networks are the heart of all this and range from small, homegrown networks to commercial online services such as America Online and CompuServe. These networks usually join together forming

consortiums known as regional networks. Using telephone lines or complex fiber optic cables with microwave links and satellite transmissions, data is transmitted. The National Science Foundation, large private corporations and government agencies pay for high-capacity lines or Backbone Network Services.

Q: How do I get connected?

Answer: Many options are available for potential users to get connected to the Internet through telephone or cable lines. One of the easiest is to use online services such as America Online, CompuServe, Prodigy, Earthlink, NetZero, Sprint, and Microsoft Network, your Local Cable Provider, and locally based providers. A comprehensive list of service providers can be found at <http://thelist.internet.com/>.

Going online at home with your personal computer requires a modem to transfer data through your phone or cable line to your service provider. A minimum speed of 56k is recommended for phone dialup modems. Remember, the faster your modem the shorter your downtime waits for pages to load.

Q: What is the World Wide Web and how is it used?

Answer: The World Wide Web, or the Web for short, originated with Tim Berners-Lee at CERN in 1990 at the European Laboratory for Particle Physics. Using a hypertext system, the Web allows users to view and access information on the Internet through an easy point-and-click process. Supporting a full range of multimedia (sound, video, image, graphics) the Web has received many accolades for ease of use. For example, with a click of a button a user can retrieve local weather information, traffic conditions and planned highway construction projects.

The last few years has brought an explosion into www.com business, surging Internet popularity. When you hear people speak of "surfing the Net", usually they're talking about using the World Wide Web. Hundreds of thousands of computers around the world make up the Web and each computer is linked through the Internet. This web of computers permits users to access information at their location and provide links to other computers, which may obtain relevant information. By far, some of the most interesting and common sites on the web are "homepages".

Q: What else should I remember?

Answer: Users should be aware of multimedia, which place a high demand on personal computers and Internet connection, thus greatly reducing speed and capacity.

The old saying "timing is everything" actually is very true when accessing the Internet. With increasing popularity of the Web, users may have delays in accessing particular sites or may notice a general lag in overall performance. Popular sites may have too many users trying to access them simultaneously.

Remembering sites you have visited is very important for re-accessing purposes. On the Web, users will visit many different sites moving from resource to resource. Writing each web address down on a sheet of scrap paper isn't the ideal solution. Web browsers offer a means known as "book marking" to save a particular Web page address so it can be easily retrieved.

Downloading means to transfer the digital data from the site to your own personal computer for future use. Users can download (save) web pages and documents using the download technique. Also, designing and building a personal home page may be of interest. Web pages can be simple to build with the right tools. Many online services provide tools to help users build and post home pages. There are also many different software packages available to aid users in home page production.

Q: What are some of the Internet Search Engines?

Answer: Some of the more common search engines are listed below.

Lycos - <http://www.lycos.com>
Yahoo - <http://www.yahoo.com/>
InfoSeek - <http://www.infoseek.com/>
AltaVista - <http://www.altavista.digital.com/>
MetaCrawler - <http://www.metacrawler.com>
Excite - <http://www.excite.com/>
WebCrawler - <http://www.webcrawler.com/>
HotBot - <http://www.hotbot.com>
Google - <http://www.google.com/>
Dogpile - <http://www.dogpile.com/>

Q: What are some useful Internet road and street sites?

Answer: A number of sites are listed below.

National Association of Counties
www.naco.org
American Association of State Highway and Transportation Officials
www.aashto.org/aashto/home.nsf/FrontPage
American Road and Transportation Builders
www.artba.org

American Public Works Assn.
www.pubworks.org

American Society of Civil Engineers
www.asce.org

LTAP Center
www.ltap.org

Department of Transportation / FHWA
www.dot.gov or www.fhwa.dot.gov

National Work Zone Safety Information Clearinghouse
<http://wzsafety.tamu.edu/>

County Engineers Association of Ohio
www.ceao.org

County Road Administration Board, Washington State
www.crab.wa.gov

Marion County Public Works, Oregon
www.co.marion.or.us

American Concrete Pavement Association
www.pavement.com

National Asphalt Pavement Association
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Q: What are some Internet acronyms I will encounter?

HTTP - Hypertext Transfer Protocol
WWW - World Wide Web
LAN - Local Area Network
HTML - Hypertext Markup Language
URL - Universal Resource Locator
IP - Internet Protocol
ISP - Internet Service Provider
PDF - Portable Document Format
DSL - Digital Subscriber Lines
VDSL - Very High Bit-Rate Digital Subscriber Lines

Q: What Internet Domains will be encountered?

Answer: The most common are listed below. This topic is not static, so additional technical changes will occur in the future.

Commercial - (.com)
Government - (.gov)
Education - (.edu)
Non-profit Organization - (.org)
Military - (.mil)
Internet - (.net)

Glossary

The glossary is designed to provide a comprehensive cross-section of road and street terms. Obviously, it does not contain all terms that could be included.

Abandonment (of right-of-way). Cessation of use of right-of-way activity upon a site with no intention to reclaim or use the site again for highway purposes. (IC 8-23-1-8)

Acquiring agency. A State agency, as defined in paragraph (a)(4) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of Sec. 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by Sec. 24.4(a)(1) or (2). (Federal-Aid Policy Guide)

Administrator. Federal Highway Administrator. (FHWA)

Advisory Plan Commission. A municipal plan commission, a county plan commission, or a metropolitan plan commission.. (IC 36-7-12)

Appropriation. Authorization given by the council by ordinance to incur obligations and disburse funds for a specific purpose, in those instances where an appropriation is required. This term is associated with the terms "Major Budget Classification" and "Object of Expenditure," also defined herein. The term differs from "fund" in that it does not represent cash but is merely the authority to expend the cash in a specific fund up to a stated amount. (Indiana County Auditors Manual)

APWA. American Public Works Association.

Area of Potential Effect (APE). The area in which a proposed project may cause alternations in the character or use of historic resources. (Section 106)

Arterial highway. A highway designed primarily for through traffic, usually on a continuous route. (IC 8-23-1-11)

Arterial street. A street designed primarily for through traffic, usually on a continuous route. (IC 8-23-1-12)

Asset Management. A systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision-making. Thus, asset management provides a framework for handling both short- and long-range planning. (FHWA and AASHTO)

Authorization. As it applies to the annual Congressional establishment and approval of spending levels for the current transportation law. The act of authorizing a set spending level for the current fiscal year budget. This Congressional authorization is the signal to government departments and agencies that they can commit funds within budget line items.

Barrett Law. Indiana Barrett Law enacted in 1905 establishes procedures to be followed when a local government seeks to make permanent improvements which benefit the public. Examples are the construction of streets, alleys, sidewalks, curbs and gutters, sanitary sewers and other public work. Local governments can charge or assess impacted property owners the costs associated with these construction projects.

Board. An official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions. (Black's Law Dictionary)

Board of Zoning Appeals. Unless preceded by a qualifying adjective, refers to a board of zoning appeals under either the advisory planning law, the area planning law, or the metropolitan development law." (IC 36-7-1-4)

Bonds. Any evidences of indebtedness, whether payable from property taxes, revenues, or any other source, but does not include notes or warrants representing temporary loans that are payable out of taxes levied and in the course of collection. (IC 36-1-2-2)

City. Refers to a consolidated city or other incorporated city of any class, unless the reference is to a school city. (IC 36-1-2-3)

Clerk. Has one of several meanings:

- (1) Clerk of the circuit court, for a county;
- (2) County auditor, for a board of county commissioners or county council;
- (3) Clerk of the city-county council, for a consolidated city;
- (4) City clerk, for a second-class city;
- (5) Clerk-treasurer, for a third-class city;
- (6) Clerk-treasurer, for a town. (IC 36-1-2-4)

CMAQ. Congestion Mitigation and Air Quality.

Comprehensive Plan. A composite of all plans of land use, of thoroughfare, of sanitation, of recreation, and of other related matters. It includes a master plan adopted under any prior law." (IC 36-7-1-5)

County arterial highway system. A system of highways designated by the county highway authority as having the greatest general importance to the county and for which responsibility is assigned to the county highway authority. (IC 8-23-1-16)

County local highway system. Roads and streets used primarily for access to residence, business, farm, or other abutting property and for which responsibility is assigned to the county highway authority. (IC 8-23-1-17)

Department. Refers to the Indiana department of transportation established under IC 8-23-2-1. (IC 8-23-1-19)

Development Plan. Specific plans for the residential, commercial, or industrial development of property setting forth certain information and data required by the plan commission. This required information and data is outlined in IC 36-7-1-6.

Disbursement. The actual payment of money by the issuance of a warrant against the county treasury. (Indiana County Auditors Manual)

Displacing agency. Means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person. (Federal-Aid Policy Guide)

Division Administrator. The chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico. (FHWA)

Eminent Domain. The power to take private property for public use by the state, municipalities and private persons or corporations authorized to exercise functions of a public character. (Black's Law Dictionary)

Encumbrance. An obligation incurred in the form of a purchase order or contract to be paid from an appropriation or fund, for which a part of the appropriation or fund is reserved, or set aside on the records, for that purpose. An encumbrance ceases when the obligation is paid. (Indiana County Auditors Manual)

Executive. Executive means:

- (1) Board of commissioners, for a county not having a consolidated city;
- (2) Mayor of the consolidated city, for a county having a consolidated city;
- (3) Mayor, for a city;
- (4) President of the board of trustees, for a town;
- (5) Trustee, for a township;
- (6) Superintendent, for a school corporation; or
- (7) Chief executive officer, for any other political subdivision. (IC 36-1-2-5)

Expenditure. The incurring of an obligation against a fund or appropriation, for which the money may or may not be disbursed. It is actually a total of encumbrances and disbursements. (Indiana County Auditors Manual)

Federal agency. Means any department, Agency, or instrumentality in the executive branch of the Government, any wholly-owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law. (Federal-Aid Policy Guide)

Federal-Aid Policy Guide. The Federal Highway Administration's (FHWA) current policies, regulations, and non-regulatory procedural guidance information related to the Federal-aid Highway Program. The FAPG replaced the Federal-aid Highway Program Manual on December 9, 1991.

FHWA. Acronym for Federal Highway Administration.

Fiscal body. Has one of several meanings:

- (1) County council, for a county not having a consolidated city;
- (2) City-county council, for a consolidated city or county having a consolidated city;
- (3) Common council, for a city other than a consolidated city;
- (4) Board of trustees; for a town;
- (5) Advisory board, for a township; or
- (6) Governing body or budget-approval body, for any other political subdivision. (IC 36-1-2-6)

Fiscal Officer. Has one of several meanings:

- (1) Auditor, for a county;
- (2) Controller, for a consolidated city or second-class city;
- (3) Clerk-treasurer, for a third class city;
- (4) Clerk-treasurer, for a town; or
- (5) Trustee, for a township. (IC 36-1-2-7)

Functional Classification. The process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide. Basic to this process is the recognition that individual roads and streets do not serve travel independently in any major way. Rather, most travel involves movement through a network of roads. Functional Classification is a determination of how this traffic can be channelized within the network in a logical and efficient manner. Functional classification defines the nature of this channelization process by defining the part that any particular road or street should play in serving the flow of trips through a highway network. (FHWA) The bottom line is answering the question: What is the function of this road?

Fund. The cash belonging to a specific named account. It also means investments of cash in securities belonging to such fund or account. (Indiana County Auditors Manual)

GASB 34. Statement issued by the Governmental Accounting Standards Board (GASB) in 1999, Entitled: Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments. The statement establishes a new financial reporting model for state and local governments to make annual reports more comprehensive and easier to understand and use. The new requirements include a narrative introductory overview and analysis called the Management Discussion and Analysis (MD&A); Government-wide financial statements prepared on the full accrual basis that are in addition to, not instead of, the traditional Fund-Based statements; and an expanded Budget Comparison that includes the adopted budget, final budget, and actual revenues and expenditures. For a full understanding of the new requirements, Obtain the statement directly from GASB at (www.gasb.org).

Grant. A federal grant may be defined as a form of assistance authorized by statute in which a federal agency (the grantor) transfers something of value to a party (the grantee) usually, but not always, outside of the federal government, for a purpose, undertaking, or activity of the grantee which the government has chosen to assist, to be carried out without substantial involvement on the part of the federal government. (HUD glossary)

Highway, street, or road. A public way for purposes of vehicular traffic, including the entire area within the right-of-way. However, the term does not include a highway for purposes of IC 8-2.1. (IC 8-23-1-23)

A road or way established and adopted (or accepted as a dedication) by the proper authorities for use of the general public and over which every person has a right to pass and to use it for all purposes of travel or transportation to which it is adapted and devoted. (Black’s Law Dictionary)

A free and public roadway or street which every person has a right to use. In popular usage, refers to main public road connecting towns or cities. In a broader sense refers to any main route on land, water or in the air. Its prime essentials are the right of common enjoyment on the one hand and the duty

of public maintenance on the other. Robinson v. Faulkner, 163 Conn. 365, 306 A 2d 857, 861. (Black’s Law Dictionary)

The word “highway” includes county bridges and state and county roads unless otherwise expressly provided. (IC 1-1-4-1)

INDOT. Indiana Department of Transportation.

Legislative body. Has one of several meanings:

- (1) County council, for a county subject to IC 36-2-3.5-1 and 36-2-3.5-6;
- (2) City-county council, for a consolidated city or county having a consolidated city;
- (3) Common council, for a city other than a consolidated city;
- (4) Board of trustees, for a town; or
- (5) Advisory board, for a township. (IC 36-1-2-9)

Limited Access Facility. A highway or street designed for through traffic, over, from, or to which owners or occupiers of abutting land or other persons have either no right or easement or a limited right or easement of direct access, light, air, or view because their property abuts upon the limited access facility or for any other reason. The highways or streets may be parkways from which trucks, busses, and other commercial vehicles are excluded or freeways open to use by all customary forms of highway and street traffic.’ (IC 8-23-1-28)

Local government. A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. (Federal-Aid Policy Guide)

Maintenance Preservation. Maintenance of the entire highway, including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization. (Federal Aid Policy Guide)

Major Budget Classification. One of the four major classifications of expense for which appropriations are made under the uniform budget system prescribed for counties. The major classifications are: Personal Services, Supplies, Other Services, and Charges and Capital Outlays. (Indiana County Auditors Manual)

Metropolitan Development Commission. The plan commission established by IC 36-7-4-202(c) for a county having a consolidated city. The term does not include a metropolitan plan commission established under IC 36-7-4-202(a).” (IC 36-7-1-10)

Metropolitan Plan Commission. An advisory plan commission cooperatively established by a county and a second class city under IC 36-7-4-202(a). The term does not include the metropolitan development commission established by IC 36-7-4-202(c). (IC 36-7-1-11)

Metropolitan planning organization. (MPO) means the forum for cooperative transportation decision making for the metropolitan planning area. MPOs designated prior to the promulgation of this regulation remain in effect until re-designated in accordance with 450.106 and nothing in this part is intended to require or encourage such redesignation.

Mitigation. Those activities designed to alleviate the effects of a major disaster or emergency or long-term activities to minimize the potentially adverse effects of future disaster in affected areas. (FEMA Federal Response Plan)

Municipal arterial street system. A system of arterial streets and highways designated by the municipal street authorities as having the greatest importance to the municipality, and for which responsibility is assigned to principal street authorities. (8-23-1-31)

Municipal corporation. "Municipal corporation" means unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, or other separate local governmental entity that may sue and be sued. The term does not include special taxing district. (IC 36-1-2-10)

Municipality. A city, town, or other municipal corporation organized under the laws of this state. (IC 36-1-2-11)

Municipal local street system. Those roads and streets used primarily for access to residence, business, or other abutting property, and for which responsibility is assigned to the municipal street authorities. (IC 8-23-1-32)

National Defense Highway System. When President Eisenhower went to Kansas to announce the interstate highway system, he announced it as "the National Defense Highway System." In 1956 President Eisenhower signed legislation establishing the National System of Interstate and Defense Highways (about 41,000 miles of roads). Since then, DOD has continued to identify and update defense-important highway routes. The National Defense Highway system was designed to move military equipment and personnel efficiently. (<http://www.globalsecurity.org/military/facility/ndhs.htm>)

Pollutant Discharge Elimination System (NPDES). As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. (EPA)

Object of Expenditure or Minor Budget Classification. One of the detail or minor classifications of expense under a major budget classification, as prescribed in the uniform budget system for counties. It also refers to appropriations where required to be made by minor object. (Indiana County Auditors Manual)

Open to public travel. The road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

Plan Commission. Unless preceded by a qualifying adjective, means an advisory plan commission, an area plan commission, or a metropolitan development commission. The term does not include a regional planning commission established under IC 36-7-7 (IC 36-7-1-14)

Planning Department. An area planning department under the area planning law. (IC 36-7-1-15)

Prevention. To hinder, frustrate, prohibit, impede or preclude; to obstruct, to intercept. (Black's Law Dictionary)

Primary system. The part of connected main highways as officially designated by the department and approved by the United States Secretary of Commerce under 23 U.S.C. (IC 8-23-1-33)

Public authority. A Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality thereof, with authority to finance, build, operate or maintain toll or toll-free highway facilities. (Federal Aid Policy Guide)

Public Road. Any road under the jurisdiction of and maintained by a public authority and open to public travel. (Federal Aid Policy Guide)

Public Way. Includes highway, street, avenue, boulevard, road, lane, or alley. (IC 36-7-1-17)

Qualifications Based Selection. A negotiated procurement process for selection based on qualifications and competence in relation to the work to be performed. (Indiana QBS Users Guide).

Railroad line. The decisions of the Interstate Commerce Commission indicate that "line of railroad" is used in its ordinary sense to denote a permanent road providing track for freight and passenger cars and other rolling stock or the equivalent of such road. (Guandolo Transportation Law.)

Redevelopment. The acquiring, relocating, laying out, repairing and maintaining, rehabilitating, or disposing of property, buildings, streets or roads so as to enact the statutory powers and duties of a redevelopment commission. (IC 36-7-1-18)

Right of Way. If a highway is constructed under this chapter, the right-of-way, or any required drainage courses, approaches, or any land necessary for the construction of a highway, or land necessary to build a bridge or a culvert shall be acquired by the county, either by donation by the owners of the land through which the highway passes or by agreement between the owner and the county executive, through eminent domain, or the public may acquire the property as is necessary in the same manner as provided for the construction of public highways. The entire cost of the right-of-way shall be paid by the county. (IC 8-17-1-3)

Risk. A possibility of danger or harm; chance, gamble, hazard. (Roget)

In insurance law, the danger or hazard of a loss of the property insured. (Black's Law Dictionary)

Risk Management. A discipline for living with uncertainty. (Kloman)

Choosing among alternatives to reduce the effects of risk. (Harwood)

Road. A highway; an open public way or public passage; a line of travel, or communication extending from one town or place to another; a strip of land appropriated and used for purposes of travel and communication between different places. (Black's Law Dictionary) See *Highway*.

Section 106. A review process required by the National Historic Preservation Act of 1996. The process analyzes projects on historic properties to find reasonable ways to avoid, reduce, or mitigate affects that are adverse to an historic property.

("Section 106", codified at 16 U.S.C. 470f), regulations that implement Section 106 are found at 36 C.F.R. Part 800.

State. Any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, "State" and "Governor of a State" include the Secretary of the Interior. (Federal Aid Policy Guide)

State agency. The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law. (Federal-Aid Policy Guide)

State-aid director. The chief administrative officer of that office of the department that administers programs of state and federal aid to local units of government, or the officer's designee. (IC 8-23-1-39)

State highway agency. That department, commission, board, or official of any state charged by its laws with the responsibility for highway construction. The term "state" should be considered equivalent to "state highway agency" if the context so implies. (Federal-Aid Policy Guide)

State highway system. A system of highways and streets which are of general economic importance to the state as a whole, and for which responsibility is assigned to the department. (IC 8-23-1-40)

Statute. A law enacted by the general assembly.

IC 36-1-2-19 Acts 1980, P.L.211, SEC.1.

Subdivision. The division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by the legislative body under IC 36-7-4." (IC 36-7-1-19)

Taxing district. A geographic area within which property is taxed by the same taxing entities and at the same total rate. (IC 36-1-2-20), as added by Acts 1980, P.L. 211, § 1.1 (IC 36-1-2-20)

Thoroughfare. Means a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains. (IC 36-9-1-8.5)

Street or passage *through* which one can *fare* (travel); that is, a street or highway affording an unobstructed exit at each end into another street or public passage. (Black's Law Dictionary)

Town. An incorporated town, unless the reference is to a school town. (IC 36-1-2-21)

Township. A civil township, unless the reference is to a congressional township or school township. (IC 36-1-2-23)

Transportation plan. A statement evaluating transportation policy objectives and projecting specific long range comprehensive actions to accomplish policy objectives. (IC 8-23-1-41)

Traveled way. The part of the roadway for the movement of vehicles. The term does not include shoulders or auxiliary lanes. (IC 8-23-1-42) The traveled path, or the path used for public travel, within located limits of the way. Also called "traveled part of the highway." (Black's Law Dictionary)

Unencumbered Appropriation. means that portion or balance of an appropriation not expended or encumbered. (Indiana County Auditors Manual)

Unit. Means county, municipality, or township. (IC 36-1-2-23)

Urban area.

- (1) an urbanized area designated by the Bureau of the Census;
- (2) if an urbanized area lies within more than one (1) state, the part of the area that lies within the boundaries of Indiana; or
- (3) an urban place designated by the Bureau of the Census having a population of at least five thousand (5,000) that is not within an urbanized area and is within boundaries cooperatively established by the department and local officials (IC 8-23-1-44)

Vacate. To put an end to; as, to vacate a street. (Black's Law Dictionary)

View. The act or proceeding by which tribunal goes to an object which cannot be produced in court because it is immovable or inconvenient to remove, and there observes it. (Black's Law Dictionary)

Viewers. Persons appointed by a court to make an investigation of certain matters, or to examine a particular locality (as the proposed site of a new road), and to report to the court the result of their inspection, with their opinion on the same. (Black's Law Dictionary)

Watercourse. ". . . , Includes lakes, rivers, streams and any other body of water. (IC 36-9-1)

Works board. Has one of several meanings:

- (1) Board of commissioners, for a county not having a consolidated city;
- (2) Board of public works or board of public works and safety, for a city; or
- (3) Board of trustees, for a town. (IC 36-1-2-24)

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